(32,953)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 501

BYRAM

H. E. [redacted], MARK W. POTTER, AND EDWARD J. BRUNDAGE, AS RECEIVERS, ETC., APPELLANTS,

vs.

A. G. RISTY, CHRIS OLSON, L. E. LARSON, ET AL., ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH DAKOTA

INDEX

	Original	Print
Record from the district court of the United States, district of South Dakota	1	1
Citation and service (omitted in printing)	1	
Bill of complaint	5	1
Exhibit "A"—Chapter 98 of the Session Laws of 1905	38	26
Exhibit "B"—Proposed distribution of proportional benefits	62	45
Exhibit "C"—Drainage notice	63	46
Exhibit "D"—Decree in case of C., M. & St. P. Ry. Co. vs. Risty et al	76	90
Motion for interlocutory injunction	82	94
Notice of motion for injunction and marshal's returns	86	96
Showing in response to motion for interlocutory injunction	94	99

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 18, 1927

	Original	Print
Exhibits in evidence	132	126
Resolution of board of county commissioners fixing cost of drainage ditch	132	126
Stipulation in matter of appeal from assessment in case of Board of Commissioners vs. C., M. & St. P. Ry. Co	135	127
Judgment, case of Board of Commissioners vs. C., M. & St. P. Ry. Co	139	129
Receipt showing payment of tax on drainage ditch	142	131
Order denying injunction	145	132
Assignments of error	149	133
Petition for appeal	152	135
Order allowing appeal	154	135
Bond on appeal (omitted in printing)	156	
Præcipe for transcript of record (" " ")	161	
Clerk's certificate (" " ")	166	
Statement of points to be relied upon and designation of parts of record to be printed	167	136
Designation of additional parts of record to be printed	169	138

[fols. 1-4]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION

Citation, in usual form, showing service on Jones & Bartlett, filed August 3, 1927, omitted in printing.

[fol. 5] IN UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION

In Equity. No. 291 Eq., S. D.

H. E. BYRAM, MARK W. POTTER, and EDWARD J. BRUNDAGE, as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, Plaintiffs,

vs.

A. G. RISTY, CHRIS OLSON, L. E. LARSON, FLETCHER ALGUIRE, and William Stringham, as County Commissioners of Minnehaha County, South Dakota; Dale E. Howe, as County Auditor of Minnehaha County, South Dakota, and Fred A. Mundt, as County Treasurer of Minnehaha County, South Dakota, Defendants

BILL OF COMPLAINT—Filed June 23, 1927

The plaintiffs, H. E. Byram, and Edward J. Brundage, residents and citizens of the state of Illinois, and Mark W. Potter, a resident and citizen of the state of New York, bring this their bill of complaint against A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire, and William Stringham, as County Commissioners of Minnehaha County, South Dakota, Dale E. Howe, as County Auditor of Minnehaha County, South Dakota, and Fred A. Mundt, as County Treasurer of Minnehaha County, South Dakota, residents and citizens of the state of South Dakota and of the Southern Division of the District of South Dakota, and respectfully show unto the Court:

First

That the Chicago, Milwaukee & St. Paul Railway Company is and was during all the times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the state of Wisconsin and a resident and citizen of said state of Wisconsin within the meaning and [fol. 6] intent of the laws conferring jurisdiction upon the District Courts of the United States; that the plaintiffs H. E. Byram and Edward J. Brundage, are and were during all the times hereinafter mentioned residents and citizens of the state of Illinois, and that the plaintiff, Mark W. Potter, is and was during all the times hereinafter mentioned a resident and citizen of the state of New York.

Second

That the defendants, A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire, and William Stringham the County Commissioners of Minnehaha County, South Dakota, Dale E. Howe, the County Auditor of Minnehaha County, South Dakota, and Fred A. Mundt, the County Treasurer of Minnehaha County, South Dakota, are each of them residents and citizens of the state of South Dakota and of the Southern Division of the District of South Dakota.

Third

That upon the 18th day of March, 1925, in a suit pending in the District Court of the United States for the Northern District of Illinois and the Eastern Division thereof, in which the Binkley Coal Company was plaintiff and the Chicago, Milwaukee & St. Paul Railway Company was defendant, the plaintiffs, H. E. Byram, Mark W. Potter, and Edward J. Brundage, were duly appointed as Receivers of the said Chicago, Milwaukee & St. Paul Railway Company by the Hon. James H. Wilkerson, District Judge of the said Northern District of Illinois, and that in a suit ancillary to said suit in the Northern District of Illinois the said H. E. Byram, Mark W. Potter and Edward J. Brundage were upon the said 18th day of March, 1925, duly appointed as Receivers of the said Chicago, Milwaukee & St. Paul Railway Company by the District Court of the United States

for the District of Minnesota and the Fourth Division [fol. 7] thereof by the Hon. Wilbur F. Booth, District Judge for the said District of Minnesota; and that upon the 19th day of March, 1925, a duly authenticated copy of the order appointing said Receivers in said ancillary suit was filed in the office of the Clerk of the District Court of the United States for the District of South Dakota; that the said H. E. Byram, Mark W. Potter, and Edward J. Brundage did thereupon duly qualify as such receivers and are the duly appointed, qualified and acting Receivers of the Chicago, Milwaukee & St. Paul Railway Company pursuant to said order of the District Court of the United States for the Northern District of Illinois and the Eastern Division thereof, and said order in said ancillary suit of the District Court for the District of Minnesota and the Fourth Division thereof.

Fourth

That the defendants, A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire and William Stringham, are the duly elected, qualified and acting county commissioners of the county of Minnehaha in the state of South Dakota, and constitute the board of county commissioners of said county of Minnehaha; that the defendant, Dale E. Howe, is the duly elected, qualified and acting auditor of the said county of Minnehaha, and the defendant, Fred A. Mundt, is the duly elected, qualified and acting treasurer of the said county of Minnehaha.

Fifth

That the Legislature of the state of South Dakota at the ninth session thereof enacted a purported law entitled: "An Act Providing for the Establishment, Construction and Maintenance of Drainage and Levees in Counties Whenever Such Drainage Shall be Conducive to the Public Health, Convenience or Welfare," which purported act was [fol. 8] approved by the Governor of the State of South Dakota on March 7, 1905, and which purported act is commonly known as Chapter 98 of the Session Laws of South Dakota of 1905; that subsequently and at its tenth session the Legislature of the State of South Dakota re-

enacted said Chapter 98 of the Session Laws of 1905 by enacting a purported law entitled: "An Act Providing for the Establishment, Construction and Maintenance of Drainage and Levees in Counties Whenever Such Drainage Shall be Conducive to the Pubic Health, Convenience or Welfare or Whenever it Shall be Necessary or Practicable for Drainage of Agricultural Lands," which purported law was approved by the Governer of the State of South Dakota February 21, 1907, and which purported law is commonly known as Chapter 134 of the Session Laws of South Dakota of 1907; that by said Chapter 134 of the Session Laws of 1907 the Legislature of the State of South Dakota attempted to re-enact said purported law known as Chapter 98 of the Session Laws of 1905, together with amendments thereto; that subsequently the Legislature of the State of South Dakota at the Sixteenth Session thereof re-enacted said Chapter 134 of the Session Laws of 1907 with amendments thereto and that such re-enactment is contained in the South Dakota Revised Code 1919, as Sections 8458 to 8491 inclusive thereof; that at its second special session in the year 1920, the Sixteenth Legislature of the State of South Dakota amended sections 8464, 8471, 8472 and 8473 of said Revised Code by Chapter 46 of the laws of the second special session of said Sixteenth Legislature; that a copy of the purported law of the State of South Dakota known as Chapter 98 of the Session Laws of 1905 as amended and re-enacted as Chapter 134 of the Session Laws of 1907, and as amended and re-enacted as Sections 8458 to [fol. 9] 8491 of the South Dakota Revised Code, 1919, and amended at the second special session of the Sixteenth Legislature is hereto attached, marked "Exhibit A," and made a part hereof.

Sixth

That prior to the year 1916 the said board of county commissioners of the said county of Minnehaha, pretending to act under the authority, purported to be conferred upon said county commissioners by said purported laws, "Exhibit A" aforesaid, took action purporting to establish a drainage ditch known as Drainage Ditch No. 1 and a second drainage ditch known as Drainage Ditch No. 2; that said Drainage Ditch No. 1 extended from a point in Section

9, Township 101, north of Range 49, west of the Fifth Principal Meridian, through Sections 4, 5 and 32 in Township 102, north of said Range 49 to a point in Section 29, Township 102, north of said Range 49; that said Drainage Ditch No. 2 extended from the northern terminus of said Drainage Ditch No. 1 in said Section 29 in a northerly direction through townships 102, 103 and 104, north of said Range 49; that said drainage ditches extended for a distance of several miles through said township and were fully completed prior to the year 1916; that assessments for the cost of the construction of said Drainage Ditch No. 1 and Drainage Ditch No. 2 were made prior to the year 1916 and that all matters connected with the construction of said ditches and with the assessment for the cost thereof were fully completed prior to the year 1916.

Seventh

That the area of land drained by said Drainage Ditch No. 1 and Drainage Ditch No. 2 is situated in the valley of the Big Sioux river north of the city limits of the city of Sioux Falls in the county of Minnehaha and State of South [fol. 10] Dakota, which city is a municipality of upwards of thirty thousand inhabitants; that the said Big Sioux river flows in a southerly direction through said Townships 101, 102, and 103, north of said Range 49, West of the Fifth Principal Meridian, and that the said city of Sioux Falls is situated in said Township 101; that after entering said township 101 at the northern boundary line thereof the said Big Sioux River flows in a southerly direction to the vicinity of the southern boundary line of said township and then flows in an easterly direction for a distance of some miles and then in a northerly direction through the said city of Sioux Falls and towards the north line of said township and then continues in an easterly direction until it passes out of said Township over the eastern line thereof; that in its course in a northerly direction through the city of Sioux Falls the Big Sioux River passes over a series of falls aggregating approximately ninety feet; that the city water supply of the said city of Sioux Falls is situated in a gravel bed extending over a considerable area in said townships 101 and 102 north of the city of Sioux Falls; that the state

penitentiary of the State of South Dakota is situated north of the said city of Sioux Falls, and that said penitentiary and the lands belonging thereto are situated in said townships 101 and 102.

Eighth

That the said Big Sioux River has its source in Lake Pelican adjoining the city of Watertown in the county of Codington and state of South Dakota, which city of Watertown is situated approximately one hundred miles north of the city of Sioux Falls; that from the said city of Water- [fol. 11] town the said Big Sioux River flows in a generally southerly direction but with many crooks and bends through the counties of Codington, Hamlin, Brookings and Moody to the city of Sioux Falls in the county of Minnehaha; and that the said Big Sioux River during its southward course drainages a large area of territory both eastward and westward of its channel; that there is little fall in said river as it passes through said townships 104, 103, 102, and the northern and west portion- of township 101 and that on either side of said river as it passes through said townships 104, 103 and 102 and the north and west portions of township 101 there is situated for a considerable distance to the eastward and westward of the channel of said river a series of flats which rise but a few feet above the channel of said river.

Ninth

That as originally constructed said Drainage Ditch No. 1 and Drainage Ditch No. 2 emptied into the Big Sioux River through a ditch constructed across the land immediately north of the city of Sioux Falls, which ditch was between the city of Sioux Falls and the gravel bed from which said city obtained its water supply, and emptied into the Big Sioux River in the northeast portion of the city of Sioux Falls and north of the series of falls situated upon said river along its course through the said city of Sioux Falls; that subsequent to the construction of said Drainage Ditch No. 1 and Drainage Ditch No. 2, and about the years 1915 and 1916 the vast volumes of water accumulating as aforesaid in the valley of the Big Sioux River and upon the

lands drained by said Drainage Ditch No. 1 and Drainage Ditch No. 2, caused the outlet of said drainage ditches into [fol. 12] the Big Sioux River, as aforesaid, to wash out a channel upon the land through which said outlet was constructed to such an extent that there arose imminent danger that the course of the Big Sioux River would be changed so that all of the water in the channel of said river would be diverted through said drainage ditches and the outlet thereof, and a new river channel formed by said ditches which would cause the water in said river to cease flowing through its proper and natural channel and over the series of falls in the city of Sioux Falls, and to flow instead through said drainage ditches and the outlet thereof into the Big Sioux River at a point north of the city of Sioux Falls; that such diversion of the channel of the said Big Sioux River threatened to cause enormous damage to property and industrial enterprises in the said city of Sioux Falls situated along the channel of said river, and to destroy the water power obtained from said river at the falls thereof, and also to destroy the municipal water supply of the said city of Sioux Falls by draining the water from the gravel bed from which said municipal water supply is obtained.

Tenth

That the change in the channel of the Big Sioux River into said Drainage Ditch No. 1 and Drainage Ditch No. 2 and through the outlet thereof into the Big Sioux River at a point north of the city of Sioux Falls if the same had been allowed to continue and become permanent would have operated to relieve the lands drained by said drainage ditches and the lands adjacent thereto of the superabundance and surplus of water flowing upon said lands and [fol. 13] that for the purpose of draining the lands adjacent to and drained by said Drainage Ditch No. 1 and Drainage Ditch No. 2 no action of any kind was necessary, excepting to permit the water to flow unhindered through said Drainage Ditch No. 1 and Drainage Ditch No. 2 into the Big Sioux River and to allow a new river channel to be formed by the natural force of the water flowing through the same.

Eleventh

That the board of county commissioners of the said county of Minnehaha for the purpose of avoiding the threatened change in the channel of the Big Sioux River and for the purpose of preventing the drainage of the gravel bed from which the city of Sioux Falls obtains its municipal water supply and for the purpose of preventing the injury to the property owners of the city of Sioux Falls which would be caused by the change in the channel of the Big Sioux River and to prevent the destruction of the water power at the falls of the Big Sioux River in the city of Sioux Falls, caused to be constructed in the summer of the year 1916 various dams and gateways at various places along said Drainage Ditch No. 1 and Drainage Ditch No. 2, made changes in the channel of the Big Sioux River along the course of said drainage ditches and constructed a spillway at the outlet of said drainage ditches into the Big Sioux River; that said construction work was done not for the purpose of bringing about the drainage of agricultural lands, nor for the drainage of any lands for any public use, nor of the lands situated within the drainage area of said Drainage Ditch No. 1 and Drainage Ditch No. 2, nor for the purpose of accelerating the flow of the surplus water from said area, but for the purpose of controlling and retarding [fol. 14] the flow of said water so that the same should not wash out a new channel for the Big Sioux River to the damage and injury of the city of Sioux Falls and of its property owners and to the destruction of its water power and its water supply; that the effect of said work has not been to drain the lands situated in the area of said Drainage Ditch No. 1 and Drainage Ditch No. 2 but to prevent the drainage of said lands by penning up the flood waters upon said lands until they would gradually pass into the Big Sioux River without danger of changing the channel of said river; that in consequence of the construction of said dams, gateways and spillway and of the making of the various cutoffs and changing of the river channel, the lands of the property owners in said drainage area have for the past crop seasons since the year 1915 been greatly damaged and the crops grown thereon have been annually destroy or greatly damaged by reason of water being retained thereon

through the construction of said dams, gateways, and cut-offs, the changing of the river channel and the construction of said spillway; that instead of having been benefited by the construction of said works the lands of the property owners within the area of the drainage district of said Drainage Ditch No. 1 and Drainage Ditch No. 2, as plaintiffs are informed and believe, were decreased fully fifty per cent of the value which the same would have been worth had said work not been done and had said drainage ditches been left as originally constructed.

Twelfth

That there has been expended by the board of county commissioners of said Minnehaha county upon the construction of ditches, dams, gateways and other work as afore-
[fol. 15] said, and upon the construction of said spillway upon the outlet of said Drainage Ditch No. 1 and Drainage Ditch No. 2 a sum in excess of Two Hundred Fifty-five Thousand Dollars for which said sum the said board of county commissioners has issued drainage warrants, and that there is due for principal and interest upon said warrants a sum, as plaintiffs are informed and believe, in excess of Three Hundred Fifty Thousand Dollars; that of said sum of money so spent as aforesaid, by the said board of county commissioners approximately sixty per cent has been expended in the construction of said spillway, dams and retaining gates, designed not for the purpose of the drainage of agricultural lands, but solely for the purpose of controlling and retarding the flow of water, through the outlet of said Drainage Ditch No. 1 and Drainage Ditch No. 2 into the Big Sioux River for the purpose of preventing a change in the channel of said river and of preventing the drainage of the gravel bed from which the said city of Sioux Falls obtains its water supply that, as plaintiffs are informed and believe, more than thirty-five per cent of said moneys expended by the said board of county commissioners has been expended for the purpose of constructing ditches for the straightening of the channel of the Big Sioux River, and that less than five per cent of said moneys has been expended for any purpose legitimately connected with the construction or maintenance of said Drainage

Ditch No. 1 and Drainage Ditch No. 2 as a ditch for the draining of agricultural lands.

Thirteenth

That prior to the construction of said spillway, dams, retaining gates and other work and straightening of the [fol. 16] channel of the Big Sioux River subsequent to the washing out of the outlet to Drainage Ditch No. 1 and Drainage Ditch No. 2 in the years 1915 and 1916, as aforesaid, there was filed in the office of the county auditor of the said county of Minnehaha a purported petition signed by F. L. Blackman and other persons, which said purported petition purported to be a petition "to reconstruct and improve Drainage Ditches No. 1 and No. 2 in Minnehaha county, South Dakota, and to construct a new spillway and outlet to said Drainage Ditches No. 1 and No. 2, and to pay therefor by assessment upon the property, persons, and corporations benefited thereby"; that thereupon the board of county commissioners of said county of Minnehaha proceeded to establish a new drainage ditch under the name of Drainage Ditch No. 1 & 2, and that the expenditure aforesaid made by the said board of county commissioners of the said Minnehaha county upon the construction of the spillway, dams, retaining gates, and other work as aforesaid were made by said board of county commissioners ostensibly for the construction of drainage works upon a new and independent drainage ditch project, although the same were designed for the drainage of the area formerly intended to be drained by Drainage Ditch No. 1 and Drainage Ditch No. 2 and over the same lines and with the same terminals.

Fourteenth

That prior to the construction of said spillway, dams, retaining gates, ditches and other work the board of county commissioners of said Minnehaha county did not fix the proportion of benefits of the proposed drainage among the lands affected and did not appoint a time and place for the [fol. 17] equalization of the same and did not give notice of said equalization either by publication or posting, and did not make any assessment for the proportioning of benefits against each tract of property affected and did not

make any assessment for the payment of damages caused by the construction of said spillway, dams, retaining gates and ditches and did not provide any moneys for the payment of such damages and did not pay any such damages.

Fifteenth

That prior to the construction of said spillway, dams, retaining gates, ditches and other work, the said board of county commissioners of Minnehaha county did not prepare plans and specifications therefor, and did not file plans or specifications therefor in the office of the county auditor of the said county of Minnehaha, and did not let contracts upon competitive bids for the construction of said spillway, dams, retaining gates, ditches and other work; that prior to the construction of said spillway the said board of county commissioners did advertise for competitive bids for the construction of the spillway in accordance with certain plans therefor; that bids were received by the said board of county commissioners for the construction of a spillway in accordance with such plans, and that the same were rejected by the said board of county commissioners, and subsequently the said board of county commissioners adopted a new and amended plan for the construction of an entirely different form of spillway, and without advertising for bids for such construction made a contract for the construction of said spillway in accordance with said new and amended plan with the Sioux Falls Construction Company, under [fol. 18] which said contract the said Sioux Falls Construction Company constructed such spillway upon the cost plus plan; that under said contract the said Sioux Falls Construction Company was paid the entire cost of the construction of said spillway, together with nine per cent of the total cost added; that the cost of the construction of said spillway under said cost plus plan was, as plaintiffs are informed and believe, upwards of one hundred fifty thousand dollars for which said sum drainage ditch warrants upon said drainage ditches No. 1 and No. 2 were issued by the said board of county commissioners of Minnehaha County to the said Sioux Falls Construction Company, and to other persons.

Sixteenth

That on or about the 20th day of November, 1920, the board of county commissioners of said Minnehaha county entered into a certain contract with Albert J. Chenoweth and Herman Rettenhouse, co-partners as Chenoweth & Rettenhouse, whereby the said board of county commissioners employed the said Chenoweth & Rettenhouse to make a topographical survey showing the lands benefited and subject to assessment for the payment of the cost of said spillway, dams, retaining gates, ditches and other work, and that by said contract the said board of county commissioners agreed to pay the said Chenoweth & Rettenhouse for said survey the sum of Seven Thousand Five Hundred Dollars to be paid in drainage ditch warrants drawn on drainage ditch No-. 1 & 2; that the said Chenoweth & Rettenhouse thereupon proceeded to make a purported survey of [fol. 19] the lands purported to be subject to assessment for the construction of said spillway, dams, retaining gates, ditches and other work; that the said Chenoweth & Rettenhouse made and filed a report with the said board of county commissioners, in which report they made a purported proposed distribution of benefits; that a copy of said proposed distribution is hereunto annexed, marked "Exhibit B" and made a part hereof.

Seventeenth

That on or about the 10th day of June, 1921, the said board of county commissioners of Minnehaha county adopted a purported notice of the time and place for equalizing the proportion of benefits for the construction of said spillway, dams, retaining gates, ditches, and other work and caused the same to be published on July 13, 1921, and on July 20, 1921, in the Sioux Falls Daily Argus-Leader, the official newspaper of the said county of Minnehaha; that a copy of said drainage notice is hereunto annexed, marked "Exhibit C" and made a part hereof; that the total benefits assessed or levied against the various properties described in said notice amounted to a total of 32,-549.62 units, and that the proportion of benefits assessed against the Chicago, Milwaukee & St. Paul Railway Company and its property was as follows:

Chicago, Milwaukee & St. Paul Railway Company, Lot 2 of the Equitable Realty Company's Subdivision of the Northeast Quarter (N. E. ¼) of the Northwest Quarter (N. W. ¼) of Section 16, Township 101, North of Range 49, 2.60 acres 2.00 units.

Chicago, Milwaukee & St. Paul Railway Company, Lots 6 and 7 of Tract 1 of the Northwest Quarter (N. W. ¼) [fol. 20] of Section 16, Township 101, North of Range 49, 3.30 acres 19.00 units.

Chicago, Milwaukee & St. Paul Railway Company station grounds, being that part of the Southeast Quarter (S. E. ¼) of the Northwest Quarter (N. W. ¼) south and west of the right of way of the Chicago, Milwaukee & St. Paul Railway Company occupied by freight house, Section 16, Township 101, North of Range 49, 1.43 acres 7.40 units.

Chicago, Milwaukee & St. Paul Railway Company, Lots 16, and 17, Block 15, Millspaugh's Addition to Sioux Falls, in Section 21, Township 101, Range 49, 1.70 units.

Chicago, Milwaukee & St. Paul Railway Company, Lots 13, 14 and 15, Block 28, Millspaugh's Addition to Sioux Falls, in Section 21, Township 101, North of Range 49, 2.50 units.

Chicago, Milwaukee & St. Paul Railway Company, Lots 5, 6, 7, 8 and 9 of Block 25 of J. L. Phillips' Sioux Falls in Section 16, Township 101, North of Range 49, 21.45 units.

Chicago, Milwaukee & St. Paul Railway Company, all of Block 9 of Daniel's Addition to Sioux Falls in Section 22, Township 101, North of Range 49, 1.92 units.

Chicago, Milwaukee & St. Paul Railway Company, benefits to right of way, tracks, embankments, and bridges across sections 4, 9, 16, 21, and 22, Township 101, Range 49, West of the Fifth Principal Meridian, and across Sections 4, 9, 16, 21, 28 and 33, Township 102, Range 49, West of the Fifth Principal Meridian, and across Sections 5, 8, 17, 20, 29, and 33, Township 103, Range 49, West of the Fifth Principal Meridian, and across Section 32, Township 104, Range 49, West of the fifth Principal Meridian, within the drainage area, 1,678.90 units.

[fol. 21] That the total proportion of benefits levied or assessed pursuant to said notice upon the said Chicago, Milwaukee & St. Paul Railway Company is a total of 1734.87 units; that upon the basis of such apportionment of

benefits the assessment against the property of the Chicago, Milwaukee & St. Paul Railway Company would be in excess of $26,023.05.

Eighteenth

That on or about the 25th day of July, 1921, the said Chicago, Milwaukee & St. Paul Railway Company filed in the District Court of the United States for the District of South Dakota and the Southern Division thereof its bill of complaint against the county commissioners, the auditor, and the treasurer of the said Minnehaha county praying that the acts of the board of county commissioners of the said county of Minnehaha aforesaid in connection with the construction of said spillway, dams, retaining gates, and ditches be adjudged to be illegal and void, that no apportionment of benefits or assessment of damages ever be made against said Chicago, Milwaukee & St. Paul Railway Company or its property therefor, and that the said county commissioners and auditor be restrained and enjoined from making any assessment against the said Chicago, Milwaukee & St. Paul Railway Company or its property for the cost of said work, and that the treasurer of the said county of Minnehaha be forever enjoined and restrained from filing any assessment and from collecting any assessment against the property of the said Chicago, Milwaukee & St. Paul Railway Company for the construction of said spillway, dams, retaining gates, and ditches; that service was made upon the several defendants in said suit brought as aforesaid by the said Chicago, Milwaukee & St. Paul Rail-
[fol. 22] way Company, and issue was duly joined therein; that thereafter various holders of warrants issued by the said board of county commissioners of the said county of Minnehaha in payment for the cost of the construction of said spillway, dams, retaining gates, and ditches and other work intervened in said suit and became parties thereto; that said suit was duly brought on for hearing before the said District Court and upon the 2nd day of March, 1922, a decree entered therein in the office of the Clerk of said District Court perpetually restraining and enjoining the defendants in said suit, their agents, servants, employees, attorneys, and successors in office, and each and every of them, from making any apportionment of benefits upon the

said Chicago, Milwaukee & St. Paul Railway Company or upon any property belonging to said company (other than upon such property of the plaintiff as may have theretofore been assessed for the original construction of Drainage Ditch No. 1 or of Drainage Ditch No. 2 of Minnehaha county, South Dakota) for the construction of a spillway, dams, retaining gates, ditches, or for all other work done or that may hereafter be done in the matter of the construction or reconstruction, repair or maintenance of drainage Ditch No. 1 and Drainage Ditch No. 2 or of said ditches under the designation of "Drainage Ditches No. 1 and No. 2" or as "Drainage Ditch No. 1 & 2" of Minnehaha county, South Dakota, and perpetually restraining and enjoining said county commissioners from making any assessment upon said property or any parcel or portion thereof for the cost of the construction or reconstruction, repair or maintenance of said spillway, dams, retaining gates, ditches, and other work theretofore done or which may hereafter be done upon said drainage ditches or any of them, and from in any [fol. 23] manner including any of the property of the said Chicago, Milwaukee & St. Paul Railway Company (other than the property originally assessed for the construction of Drainage Ditch No. 1 or of Drainage Ditch No. 2) within the territory benefited by said drainage ditches, or of either of them; that by said decree it was further ordered, adjudged and decreed that the auditor of the said county of Minnehaha be restrained from making any such apportionment of damages or from making or levying any such assessment upon the said Chicago, Milwaukee & St. Paul Railway Company, and that the treasurer of the said county of Minnehaha be restrained and enjoined from filing any such assessment and from collecting any such assessment against the property of the plaintiff, the Chicago, Milwaukee & St. Paul Railway Company; that it was further decreed that said decree be and is declared to be without prejudice to any of the rights of the Chicago, Milwaukee & St. Paul Railway Company to object to any apportionment of benefits for the construction of said spillway, dam, retaining gates, or ditches, or other work theretofore done or that thereafter be done in the matter of the construction or reconstruction, repair or maintenance of Drainage Ditch No. 1 or of Drainage Ditch No. 2, or of the drainage ditches No.

1 and 2, or of drainage ditch No. 1 & 2, of Minnehaha County, South Dakota, upon any of the property of the Chicago, Milwaukee & St. Paul Railway Company which may heretofore have been assessed for the original construction of said Drainage Ditch No. 1 or of said Drainage Ditch No. 2, and without prejudice to any and all rights of the Chicago, Milwaukee & St. Paul Railway Company to contest any such apportionment of benefits or any assess-
[fol. 24] ment which may be made under any such apportionment of benefits or any act of the board of county commissioners of said county of Minnehaha in the construction of said spillway, dams, retaining gates, ditches, and other work heretofore done or which may hereafter be done by and under the supervision of the board of county commissioners of the said county of Minnehaha in the matter of the construction, reconstruction, repair or maintenance of said Drainage Ditch No. 1 or of said Drainage Ditch No. 2 or of said drainage ditches No. 1 and 2 or of said drainage ditch No. 1 & 2; that a copy of said decree is hereunto annexed, marked "Exhibit B" and made a part hereof.

Nineteenth

That thereafter an appeal was duly taken to the Circuit Court of Appeals of the United States for the Eighth Circuit by the defendants and by the intervening defendants from said decree, "Exhibit D" aforesaid, and upon the 18th day of March, 1924, a decree was entered in the said United States Circuit Court of Appeals for the Eighth Circuit affirming the said decree, "Exhibit D," of the said District Court; that thereafter an appeal was taken to the Supreme Court of the United States from said decree of the United States Circuit Court of Appeals for the Eighth Circuit and upon the hearing upon said last appeal in the Supreme Court of the United States the said decree of said Circuit Court of Appeals was affirmed upon the 1st day of March, 1926.

Twentieth

That the only property of the Chicago, Milwaukee & St. Paul Railway Company situated within the original assess-
[fol. 25] ment area of Drainage Ditch No. 1 and the only

property of said Chicago, Milwaukee & St. Paul Railway Company which was assessed for the original construction of said Drainage Ditch No. 1 consisted of the following described tracts or parcels of property, to-wit:

Right of way as laid out and located across Sections 28, 29, and 31, Township 103, Range 49, West of the Fifth Principal Meridian, 25.02 acres;

Also, right of way as now laid out and located across Sections 4, 9, 16, 21, 28 and 33, Township 102, Range 49, West of the Fifth Principal Meridian, Sioux Falls & Egan line, 72.50 acres;

Also, right of way as now laid out and located across Sections 5, 8 and 9, Township 102, Range 49, West of the Fifth Principal Meridian, (Sioux Falls & Madison line) 17.30 acres;

Also, right of way as now laid out and located across Sections 4 and 9, Township 101, Range 49, West of the Fifth Principal Meridian, 17.05 acres.

That the only property of the Chicago, Milwaukee & St. Paul Railway Company situated within the original assessment area of Drainage Ditch No. 2 and the only property of said Chicago, Milwaukee & St. Paul Railway Company which was assessed for the original construction of said Drainage Ditch No. 2 consisted of the following described tracts or parcels of property, to-wit:

Right of way as laid out and located across Sections 4 and 9, Township 101, Range 49, and Sections 4, 9, 16, 21, 28 and 33, Township 102, Range 49, and Sections 5, 8, 17, 20, 28, 29 and 33, Township 103, Range 49, and Section 32, Township 104, Range 49, West of the Fifth Prin-
[fol. 26] cipal Meridian, within the drainage area (the above being the Sioux Falls and Egan line) and across Sections 5, 8 and 9, Township 102, Range 49, West of the Fifth Principal Meridian, within the drainage area (being the Renner & Madison line) total 14.5 miles 167.06 acres.

Twenty-first

That, excepting the property in the last paragraph herein described, no part, parcel, or portion of the property belonging to the said Chicago, Milwaukee & St. Paul Railway Company and described in said notice, "Exhibit C,"

formed a part of the original assessment area of said Drainage Ditch No. 1 and of said Drainage Ditch No. 2 for which an assessment was made at the time said ditches were originally constructed, and that all other property belonging to said Chicago, Milwaukee & St. Paul Railway and mentioned in said notice, "Exhibit C" consists of property upon which an apportionment of benefits was sought to be made for the first time by said notice, "Exhibit C," and consist of property, the making of an assessment upon which has been perpetually enjoined by said decree of the District Court of the United States for the District of South Dakota, affirmed, as aforesaid, by the decree of the Circuit Court of Appeals for the Eighth Circuit, and by the decision of the Supreme Court of the United States.

Twenty-second

That the plaintiffs, as receivers as aforesaid of the Chicago, Milwaukee & St. Paul Railway Company, are engaged in the operation of a line of railroad in the said county of [fol. 27] Minnehaha and state of South Dakota; that all of the property of said railroad in said county of Minnehaha consists of its right of way, station grounds, line of railroad, bridges, culverts, rolling stock, and other property employed in the maintenance and operation of its line of railroad; that said Chicago, Milwaukee & St. Paul Railway Company is not and was not at the time of the construction of said spillway and other works pertaining to Drainage Ditch No. 1 and 2, or at any time subsequent thereto, the owner of any agricultural land in said county of Minnehaha other than that required for its right of way; that it is not engaged in any other agricultural operations and that the construction of said spillway, dams, retaining gates, ditches, and other works done, as aforesaid, by the board of county commissioners of the said county of Minnehaha, conferred no benefits upon the said Chicago, Milwaukee & St. Paul Railway Company or its property; that no notice other than "Exhibit C" has ever been given of the equalization of benefits upon the property of the property owners claimed to have been benefied by the construction of said spillway, dams, ditches, and other works in connection with said Drainage Ditch No. 1 and 2, excepting certain notices published prior to the publication of said

"Exhibit C," and which were subsequently abandoned by the said board of county commissioners of the said county of Minnehaha; that no notice has ever been published giving or stating a description of every tract of land affected by the proposed drainage and the names of the owners of the several tracts of land, as appears from the records of the office of the register of deeds at the date of the filing of the petition, and the proportion of benefits fixed for each tract of property; that no notice has ever been given or published [fol. 28] giving a description of each tract of land belonging to the said Chicago, Milwaukee & St. Paul Railway Company affected by the proposed drainage or the proportion of benefits fixed for each tract of property belonging to said railway company.

Twenty-third

That this action is a suit of a civil nature to resist and prevent an assessment upon the property of plaintiff under the pretended authority of a purported act of the Legislature of the state of South Dakota claimed by plaintiffs to be in conflict with the due process of law clause of the Fourteenth Amendment to the Constitution of the United States and that the amount in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars ($3,000) and is the amount of said purported assessment, to-wit: a sum in excess of Twenty-six Thousand Dollars ($26,000).

That the costs of the board of county commissioners of said Minnehaha County in constructing said spillway, dams, retaining gates, and ditches, were unauthorized under the constitution and laws of the state of South Dakota, and that the same have never been approved by the State Engineer of the state of South Dakota; that no benefits have accrued to the Chicago, Milwaukee & St. Paul Railway Company or its property by the construction of said spillway, dams, retaining gates, and ditches and by the other work done as aforesaid upon the property, in the drainage area of said Drainage Ditch No. 1 and Drainage Ditch No. 2 but that the same have been and are a positive damage to the property of the Chicago, Milwaukee & St. Paul Railway Company.

[fol. 29] Twenty-fourth

That no notice has ever been given by the board of county commissioners of said Minnehaha County of the apportionment of benefits for the construction of said spillway, dams, retaining gates, ditches, and other work heretofore or that may hereafter be done by the board of county commissioners of said Minnehaha county upon said Drainage Ditch No. 1 and 2 upon the property of the said Chicago, Milwaukee & St. Paul Railway Company heretofore assessed for the original construction of said Drainage Ditch No. 1 and of said Drainage Ditch No. 2, and that in said notice, "Exhibit C" there is contained no apportionment of benefits upon said property excepting said apportionment of 1678.90 units upon said Chicago, Milwaukee & St. Paul Railway Company for benefits to right of way, tracks, embankments, and bridges across various tracts of land in townships 101, 102, 103, and 104 range 49, west of the Fifth Principal Meridian, the major portion of which said property consists of property of said Chicago, Milwaukee & St. Paul Railway Company situated outside of the area and property heretofore assessed for the original construction of said Drainage Ditch No. 1 and of said Drainage Ditch No. 2; that there is nothing in said notice, "Exhibit C" contained nor in the proceedings of the said board of county commissioners of the said county of Minnehaha with respect to the apportionment of benefits for the construction of said spillway, dams, retaining gates, ditches, and other work by which it can be determined by the plaintiffs or by said board of county commissioners or by anyone else interested the amount of the apportionment of benefits upon the property of the said Chicago, Milwaukee & St. Paul Railway Company assessed for the original [fol. 30] construction of said Drainage Ditch No. 1 or of said Drainage Ditch No. 2 and amount of the apportionment upon the other property of said railway company not so assesed; that under said notice, "Exhibit C," it would be impossible for the said board of county commissioners of the said county of Minnehaha to apportion the benefits to the Chicago, Milwaukee & St. Paul Railway Company for the construction of said spillway, dams, retaining gates, ditches and other work upon such property of the said

railway company as may heretofore have been assessed for the original construction of said Drainage Ditch No. 1 or of said Drainage Ditch No. 2.

Twenty-fifth

That the day of hearing specified in said notice, "Exhibit C," was the 1st day of August, 1921; that upon the said return day of said notice, August 1, 1921, no proceedings were had by said county commissioners of the said county of Minnehaha under said notice excepting to adjourn the hearing thereunder to a later date; that subsequently further action was taken by the said board of county commissioners purporting to adjourn and continue said hearing from time to time to various dates, but that upon several of the dates to which said hearing was purported to have been continued no meetings were held by the said board of county commissioners and no action taken under said notice and that by the failure to hold such meetings and by the failure to act upon the return day of said notice, the 1st day of August, 1921, or upon the dates to which said hearing was adjourned or continued by said board, the said [fol. 31] board of county commissioners lost jurisdiction to take any further proceedings or action under said notice; that notwithstanding such loss of jurisdiction the said board of county commissioners of the said county of Minnehaha pretend to have again adjourned said hearing until the 9th day of July, 1927, and are threatening that upon said 9th day of July, 1927, they will take action pursuant to said notice making final the apportionment of benefits upon the various property owners mentioned in said notice, including the said Chicago, Milwaukee & St. Paul Railway Company, and will levy an assessment against said property owners, including said Chicago, Milwaukee & St. Paul Railway Company, for the alleged benefits apportioned to them severally by said notice; that, as plaintiffs are informed and believe, the said board of county commissioners are intending at said meeting on July 9, 1927, either to make an apportionment of benefits upon the property of the said Chicago, Milwaukee & St. Paul Railway Company held by plaintiff as a part of their receivership estate pursuant to said notice, "Exhibit C," and in violation of said decree of this court, "Exhibit D," or to make an arbitrary appor-

tionment of benefits either of the number of units specified in said notice, "Exhibit C" and apportioned to the said Chicago, Milwaukee & St. Paul Railway Company or in some other arbitrary number of units upon the property of the Chicago, Milwaukee & St. Paul Railway Company held as a part of the receivership estate of plaintiffs, and upon which an assessment was heretofore levied for the original construction of said Drainage Ditch No. 1 and of said Drainage Ditch No. 2, and to make such arbitrary apportionment of benefits regardless of the fact that no apportionment of benefits upon said property has ever been made and no notice thereof ever published.

[fol. 32] Twenty-sixth

That said purported statute of the state of South Dakota, "Exhibit A" hereto, is unconstitutional and void in that it is in violation of the Fourteenth Amendment to the Constitution of the United States; that said statute, "Exhibit A," is further void and unconstitutional in that the same provides no fixed and determinable method or rule for the apportionment of benefits upon the property *and* property owners situated in the drainage area and especially in that said purported statute furnishes no fixed nor determinable basis for the apportionment of benefits upon the property of railroad companies or other corporations and upon the property of municipal or quasi-municipal corporations, and upon platted property in cities or villages; that said purported law, "Exhibit A," is further unconstitutional and void in that the same provides for an assessment against property without the right of the property owners to be heard thereon and without notice of any character to the property owners; that said purported law, "Exhibit A," is further unconstitutional and void in that no notice to property owners is required before a drainage assessment area is established or the work constructed; that if said apportionment of benefits be made as threatened by the said board of county commissioners of the said county of Minnehaha and as provided in said notice, "Exhibit C," that the same will constitute the taking of the property of plaintiffs and of the other property owners affected by said notice without due process of law; that a cloud will be

placed upon the title of plaintiffs to the real property belonging to their receivership estate situated within said drainage area affected by said notice, "Exhibit C," and that there will result a multiplicity of suits and that plaintiffs and the other property owners affected will suffer ir-
[fol. 33] reparable injury; that the equalization of benefits fixed by the board of county commissioners of Minnehaha County, South Dakota as shown by the notice, "Exhibit C" hereto, against the property of the said Chicago, Milwaukee & St. Paul Railway Company is wholly speculative, arbitrary, unjust, illegal and discriminatory, and was made by the board of county commissioners of said county of Minnehaha without any reasonable or rational basis therefor and is not in proportion to any benefit which the property of the Chicago, Milwaukee & St. Paul Railway Company has ever received or ever can receive by the rebuilding of the spillway and the cleaning out, repairing, and maintaining of Drainage Ditch No. 1 and Drainage Ditch No. 2; that the property of the said Chicago, Milwaukee & St. Paul Railway Company has not and never can be benefited by the work performed by the said board of county commissioners as herein set forth to the extent of Twenty-six Thousand Dollars ($26,000), or to any extent whatever, and that the assessments sought to be made upon the property of the Chicago, Milwaukee & St. Paul Railway Company as above set forth is out of all proportion to the assessments sought to be levied upon and collected from the agricultural lands situated north of the city of Sioux Falls and within the drainage area of said Drainage Ditch No. 1 and Drainage Ditch No. 2; that the said equalization of benefits is so arbitrary and discriminatory against the property of the Chicago, Milwaukee & St. Paul Railway Company as to deprive said railway company and the plaintiffs of their property without due process of law and to deprive the plaintiffs of the equal protection of the law; that plaintiffs have no plain, speedy or adequate remedy at law.

[fol. 34] Wherefore, plaintiff- prays that the defendants and each of them, their agents, servants, employees, attorneys, and successors in office and each and every of them, be forever restrained and enjoined from proceeding further in the making of an apportionment of benefits upon the property of the Chicago, Milwaukee & St. Paul Railway

Company now held by plaintiffs as a portion of their receivership estate for the construction of said spillway, dams, retaining gates, ditches, and for the other work done, as aforesaid, by the board of county commissioners of the said county of Minnehaha in the assessment area of said Drainage Ditch No. 1 and said Drainage Ditch No. 2, and restrained and enjoined from making any assessment upon the property of said Chicago, Milwaukee & St. Paul Railway Company (the same being a portion of the receivership estate of the plaintiffs) for the cost of the construction of said spillway, dams, retaining gates, ditches, or other work, or any part thereof, and from proceeding in any manner under said purported statute, "Exhibit A," in the construction of any work in the area of said Drainage Ditch No. 1, said Drainage Ditch No. 2, or said purported Drainage Ditch No. 1 & 2, and from doing any act looking towards an apportionment of benefits for any work heretofore done in the area of said Drainage Ditch No. 1 and Drainage Ditch No. 2 and Drainage Ditch No. 1 & 2, and from doing any act tending towards the making of any assessment for the cost of any such work heretofore done, and from in any manner proceeding under said purported law, "Exhibit A," in the doing of any work in the area of said Drainage Ditch No. 1, Drainage Ditch No. 2, or Drainage Ditch No. 1 & 2; that the defendant, Dale E. Howe, as auditor of the [fol. 35] said county of Minnehaha his deputies and assistants and his successors in office, be forever restrained and enjoined from making any apportionment of benefits for work done as aforesaid in the area of Drainage Ditch No. 1, Drainage Ditch No. 2, or of Drainage Ditch No. 1 & 2, and from making or filing any assessment therefor upon the property of the Chicago, Milwaukee & St. Paul Railway Company, or upon the property held by plaintiffs as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, and from certifying any assessment therefor to the county treasurer of the said county of Minnehaha; that the defendants, A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire, and William Stringham, as county commissioners of the said county of Minnehaha, and their successors in office, be forever restrained and enjoined from fixing a proportion of benefits for the construction of said spillway, dams, retaining gates, and ditches upon the property of the

Chicago, Milwaukee & St. Paul Railway Company, upon the property held by plaintiffs as receivers of said Chicago, Milwaukee & St. Paul Railway Company, and upon the property of the other property owners named in said notice, "Exhibit C," and be forever restrained and enjoined from making any assessment against plaintiffs or the property held by them as receivers of the Chicago, Milwaukee & St. Paul Railway Company, as aforesaid, or against the property of any other property owner in the area of said Drainage Ditch No. 1, Drainage Ditch No. 2, and Drainage Ditch No. 1 and 2 for the cost of said work; that the defendant, Fred A. Mundt, as treasurer of Minnehaha County, South Dakota, his deputies and assistants and his successors in office and each and every of them be forever re-
[fol. 36] strained and enjoined from filing any assessment and from collecting any assessment against the property belonging to the receivership estate of the plaintiffs, or against the property of the other property owners named in said notice "Exhibit C," upon any assessment for the construction of said spillway, dams, retaining gates and ditches; that the said purported statute of said state of South Dakota, "Exhibit A," hereto, be adjudged and decreed to be unconstitutional and void; that all acts of the said board of county commissioners of the county of Minnehaha and of the state engineer of the state of South Dakota heretofore done in connection with the construction of said spillway, dams, retaining gates, and ditches be adjudged to be illegal and void; that it be adjudged and decreed that no benefits have resulted to the plaintiffs or to their receivership estate from the construction of said spillway, dams, retaining gates, and ditches, and that no apportionment of benefits or assessment of damages therefor ever be made against plaintiffs or against the property belonging to their receivership estate.

That pending the issuance of a perpetual injunction herein this Honorable Court grant an interlocutory injunction herein restraining the defendants herein, their deputies, agents, servants, and employees and each and every of them, from doing any of the above mentioned acts until the final hearing herein, or until the further order of this Court; that before the hearing and determination of plaintiffs' application for an interlocutory injunction this Court

grant a temporary restraining order restraining the said defendants, their agents and servants, and each and every [fol. 37] of them, from doing any of the above mentioned acts until the hearing and determination of plaintiffs' application for an interlocutory injunction herein.

The plaintiffs further pray that a subpœna of the United States of America issue out of and under the seal of this Honorable Court directed to the defendants, A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire, and William Stringham, individually and as county commissioners of the county of Minnehaha in the state of South Dakota, and to Dale E. Howe, individually and as county auditor of said Minnehaha county, and to Fred A. Mundt, individually and as treasurer of said Minnehaha county, thereby commanding them and each of them on a day certain, therein to be named, to be and appear before this Honorable Court and then and there to answer (but not under oath, answer under oath being hereby expressly waived) all and singular, the premises and to perform and abide by such order, direction or decree as may be made in the premises, and that on final hearing hereof said order of injunction may be made permanent. Plaintiffs further pray for such other and further relief as shall to the Court seem just, proper and equitable and for its costs and disbursements herein.

Bailey & Voorhees and Hepperle & Fuller, solicitors for plaintiff. H. H. Field, O. W. Dynes, of counsel.

[fol. 38] *Duly sworn to by Edward J. Brundage. Jurat omitted in printing.*

EXHIBIT "A" TO BILL OF COMPLAINT

Chapter 98 of the Session Laws of 1905, as amended and reenacted as Chapter 134 of the Session Laws of 1907, and as amended and reenacted as Sections 8458 to 8491 of the South Dakota Revised Code of 1919, and as amended at the Second Special Session of the Sixteenth Legislature of the State of South Dakota.

(Note: The section numbers at the beginning of each paragraph are those of the South Dakota Revised Code of 1919. The references at the end of each paragraph are to the session laws of the various years.)

[fol. 39] #8458. Power of County Commissioners.—The Board of County Commissioners, at any regular or special session, may establish and cause to be constructed any ditch or drain; may provide for the straightening or enlargement of any watercourse or drain previously constructed, and may provide for the maintenance of such ditch, drain or watercourse whenever such ditch, drain or watercourse shall be conducive to the public health, convenience or welfare, or whenever the same shall be for the purpose of draining agricultural land. (#1, ch. 98, 1905; #1, ch. 134, 1907).

#8459. Petition.—Such board shall act only upon a written petition signed by one or more owners of land likely to be affected by the proposed drainage. Such petition shall set forth the necessity for the drainage, a description of the proposed route by its initial and terminal points and its general course, or by its exact course in whole or in part, and a general statement of the territory likely to be affected thereby. The petition shall be accompanied by a bond with sufficient sureties to be approved by the county auditor, conditioned to pay all expenses incurred in case the board does not grant the petition or the same is denied on appeal. Such petition may be presented at any regular or special meeting of the board, and, if sufficient in form shall, be ordered filed with the county auditor. (#2, ch. 98, 1905; #2, ch. 134, 1907).

#8460. Inspection of Proposed Route.—It shall be the duty of such board to act promptly upon all drainage petitions. Upon filing such petition the county auditor shall transmit a copy thereof to the state engineer, who, together [fol. 40] with the board of county commisioners shall as soon as practicable, inspect the proposed route and, if in the opinion of such board and the state engineer it is necessary, the board shall cause a survey of the proposed drainage to be made by such competent surveyor as such board may select, but such su-vey shall be under the general supervision of the state engineer. Such survey shall primarily be for the purpose of aiding the board in determining the necessity of the proposed drainage, but may be a complete survey such as will be required for the construction of the proposed drainage and assessment of its cost, or as much less as the board may require. Such survey may extend to other lands than those affected by the proposed drainage

for the purpose of determining the best practical method of draining the entire section of country of which the lands proposed to be drained, or a portion of them, are a part. For the purpose of inspection or surveys, the county commissioners, surveyors or their employes may enter upon any lands traversed by the proposed drainage or in their judgment likely to be affected thereby. The county auditor shall promptly furnish the state engineer with a copy of the surveyor's report mentioned in the succeeding section and of all maps and plans filed by such surveyor and also with a copy of such further files as the state engineer may ask for. In case the drainage is established the preparation of plans and specifications upon which the contract of construction is to be awarded and also the work of construction, shall be under the supervision of the state engineer. It shall be the duty of the state engineer to render such assistance and advice to the board of county commissioners in regard to such drainage as the duties of his office will permit and he shall be reimbursed by such board [fol. 41] for his expenses incident thereto: provided, that in case of minor ditches the state engineer shall not be required to attend with the board of county commissioners at the first inspection, nor to perform subsequent services if in his judgment it shall not be necessary for him so to do. (#3, ch. 98, 1905; #3, ch. 134, 1907; #1, ch. 102, 1909).

#8461. Surveyor's Report—Notice of Hearing.—The surveyor shall report in writing to the board of county commissioners and his report shall be filed with the petition. After personal inspection or after the receipt of the surveyor's report the board shall determine the exact line and width of the ditch, if the same shall not be fixed in the petition, and shall file its determination with the petition. The board shall then fix a time and place for the hearing of the petition and shall give notice thereof by publication at least once each week for two consecutive weeks in a newspaper of the county, to be designated by the board, and by posting copies of such notice in at least three public places near the route of the proposed drainage. Such notice shall describe the route of the proposed drainage and the tract of country likely to be affected thereby in general terms, the separate tracts of land through which the proposed drainage will pass and give the names of the owners thereof as appears

from the records of the office of the register of deeds on the date of the filing of the petition, and shall refer to the files in the proceedings for further particulars. Such notice shall summon all persons affected by the proposed drainage to appear at such hearing and show cause why the proposed drainage should not be established and constructed, and [fol. 42] shall summon all persons deeming themselves damaged by the proposed drainage or claiming compensation for the lands proposed to be taken for the drainage to present their claims therefor at such hearing. (#4, ch. 98, 1905, #4, ch. 134, 1907; #2, ch. 102, 1909).

#8462. Hearing on Petition.—At such hearing any person interested may appear and contest the statements of the petition and matters set forth in the surveyor's report and the finding of the board as to width and route. The petitioners in like manner may be heard in support of the petition. After full hearing the drainage may be established along the line set forth in the petition or in the finding of the board prior to the hearing, or the board may vary the route thereof, or its width, as deemed practicable or necessary. If the board deems it best to vary the route, or to materially change the initial or terminal points of such proposed drainage so that it will pass through other lands than those described in the notice of hearing, or to increase the width of lands to be taken for the proposed drainage, the board shall adjourn the hearing and give the owners of such lands notice as in case of the original hearing. No open ditch shall be constructed within the limits of any public highway except where the topography of the country makes such construction advisable and in such case the ditch shall be located at a sufficient distance from the center of such highway to permit a roadway of standard width being constructed. If the proposed drainage does not give sufficient fall to drain the lands sought to be drained or will not properly take care of the waters collected by such drainage, the same shall be extended so as to secure the drainage or properly dispose of the water. The hearing in any such case shall be adjourned and notice given to all parties newly [fol. 43] affected as in case of the original hearing. When the board of county commissioners shall have fully heard and considered such petition, and all matters in opposition to or in support of the same, it shall, if it finds the pro-

posed drainage not conducive to the public health, convenience or welfare, or not needed or practicable for the purpose of draining agricultural lands, deny such petition, the petitioners to be jointly and severally liable for the costs of the proceedings, the same to be recovered in a civil action. If it finds the drainage proposed or any variation thereof conducive to the public health, convenience or welfare, or necessary or practicable for draining agricultural lands, it shall establish the drainage and shall assess the damages sustained by each tract of land or other property through which the same shall pass and the damages as compensation for the land taken for the route of such drainage. Any person interested may be heard in the matter of damages or compensation for land and the determination of the board of county commissioners shall be final unless an appeal therefrom, as provided in this article, shall be taken, failure to prosecute such appeal or to appear and contest an award of damages by the board to be deemed conclusively a waiver of any such damages or compensation for land taken or of any claimants right to have the same assessed by the jury. Such drain shall be given a name and the proceeding thereafter taken shall be recorded and indexed in a book kept for that purpose in the auditor's office. (#5, ch. 98, 1905; #5, ch. 134, 1907; #3, ch. 102, 1908; #1, ch. 205, 1917).

[fol. 44] #8463. Equalization of Benefits.—After the establishment of the drainage and the fixing of the damages, if any, the board of county commissioners shall fix the proportion of benefits of the proposed drainage among the lands affected, and shall appoint a time and place for equalizing the same. Notice of such equalization of proportion of benefits shall be given by publication at least once each week for two consecutive weeks in a newspaper of the county to be designated by the board, and by posting copies of such notice in at least three public places near the route of the proposed drainage. Such notice shall state the route and width of the drainage established, a description of each tract of land affected by the proposed drainage and the names of the owners of the several tracts of land as appears from the records of the office of the register of deeds at the date of the filing of the petition and the proportion of benefits fixed for each tract of property, taking any par-

ticular tract as a unit, and shall notify all such owners to show cause why the proportion of benefits shall not be fixed as stated. Upon the hearing of the equalization of the proportion of benefits, the board of county commissioners shall finally equalize and fix the same according to benefits received. The proportion of benefits which any county, city, town or township may obtain by the construction of such drainage to highways or otherwise, and the benefits which any railroad company may obtain for its property by such construction, shall be fixed and equalized together with the proportion of benefits to tracts of land. Benefits to be considered in any case shall be such as accrue directly by the construction of such drainage or indirectly by virtue of such drainage being an outlet for connection drains that may be subsequently constructed. (#6, ch. 98, 1905; #6, [fol. 45] ch. 134, 1907; #4, ch. 102, 1909).

#8464. Assessments.—After the equalization of the proportion of benefits the board may make an assessment against each tract and property affected, in proportion to the benefits as equalized, for the purpose of paying the damages and the cost of establishment thus far incurred or to be incurred. The cost of establishment shall include the costs of the service of the board of county commissioners, surveyors and assistants, plans and profiles, publication and filing, and other fees, interest on bonds issued or to be issued and all other expenses incurred or to be incurred that in any way contributed or will contribute to the establishment or construction of the drainage. At the expiration of thirty days after the making of such assessment, a copy thereof certified by the county auditor shall be filed by him with the county treasurer, but before the same is filed a notice shall be given by the board of the time when the same will be so filed, by publication at least once each week for two consecutive weeks in a newspaper in the county to be designated by the board and by posting copies of such notice in at least three public places near the route of such drainage. Such notice shall also contain a description of the property assessed, the name of the owner as it appears in such assessment and the amount of each assessment, together with the amount assessed against the county or any city, town, township or railroad company, and shall also give the date when the assessment will become delin-

quent, together, with the amount of penalty which will then accrue and the date from which interest will begin to run.

From the time of filing such certified copy of assessment in the treasurer's office, the same shall be due and payable [fol. 46] and shall be valid and perpetual liens upon the respective tracts so assessed against all persons or governments except the state and the United States, and if not paid within ten days, a penalty of five per cent shall attach thereto and such assessment shall bear interest from the date of the order of the assessment at a rate not to exceed eight per cent per annum payable annually. Such assessment shall be paid to and received by the county treasurer and paid over to the holders of the assessment certificates or upon the order of the board of county commissioners. The board of county commissioners may issue separate assessment certificates against each tract assessed for the amount of the assessment thereon and may sell the same at not less than par value with all accrued interest or may contract to pay for the construction of such drainage with such assessment certificates or with warrants. Such assessment certificates shall refer to the record in the office of the county auditor of the order of assessment and of the filing of a copy thereof in the county treasurer's office, shall transfer to the holder all interest, claim, or right in or to such assessment, bear the same rate of interest, carry the lien of such assessment and be enforci-ble as provided by law. Assessments for drainage or installments thereof shall be enforced by the county treasurer by sale of the property at the annual tax sale, provided that no such assessment or installment thereof shall be included in the sale of any given year unless the same shall have been delinquent on or before August first of each year. The provisions of Chapters 7, 8, 9, Part 9 of this title shall apply to the enforcement of the lien or drainage assessments so far as such provisions are applicable, except that a treasurer's deed issued upon a delinquent drainage assessment [fol. 47] shall recite the fact that the title conveyed is subject to all the claims which the state or any political subdivision thereof may have thereon for annual taxes.

Whenever an assessment for drainage or an installment thereof has been made against any county, city, town or township, as provided in this chapter, the officers of such

county, city, town or township, whose duty it is under the law to make the levy of taxes, shall at the time of the next annual tax levy after the making of such assessment make a levy for drainage purposes of such an amount as shall be necessary to pay such assessment, and return the same to the proper officers as provided by — for *the* other taxes, and such levy and tax shall be enforced and collected in all respects as provided by law for other taxes; provided, that any surplus remaining in any fund at the close of any year may be used by any township to pay and apply on any drainage assessment, as provided herein; provided, further, that in unorganized townships the county commissioners shall be authorized to pay for drainage as provided herein out of any money belonging to such unorganized township, and each succeeding year a like levy shall be made by such authorities until the whole of such assessment for drainage is paid. Instead of making an annual assessment for the purpose of paying the damages allowed in any drainage proceeding and the costs of establishment and construction, the board of county commissioners may issue warrants payable only out of the assessments to be subsequently made, the same to bear interest at a rate not to exceed eight per cent per annum payable annually, and may sell such warrants at not less than the face value thereof and shall with such money so raised pay any dam- [fol. 48] ages allowed and cost of establishment and construction. In making assessment for such drainage such warrants and the cost of issuing the same shall be included in the costs of the drainage. (#7, ch. 98, 1905; #7, ch. 134, 1907; #5, ch. 102, 1909; ch. 130, 1911, and as amended by #1, ch. 46, Laws of Second Special Session of the Sixteenth Session of the Legislature of South Dakota 1920).

#8465. Bids—Specifications—Contracts.—Whenever sufficient money shall have been collected the damages occasioned by the construction of such drainage and fixed as herein provided shall be paid and thereupon the board of county commissioners shall proceed to construct such drainage and shall let contracts for the construction of the same. Such contracts may require the contractors to take their pay in assessment certificates or in warrants to be thereafter issued. The contract may be for the construction of

the entire drainage or for any portion thereof and shall be let upon competitive bids, the board reserving the right to reject any and all bids. The lowest responsible and capable bidder shall be accepted but if any landowner affected be an equally low, capable and responsible bidder with a nonowner of the lands affected the former shall be preferred. When any contract shall be let the contractor shall give a bond in such sum as shall be approved by the board of county commissioners, conditioned for the faithful performance of his work and full completion of his contract to the satisfaction of such board. For the information of the contractors in bidding upon the proposed drainage, full plans and specifications shall be filed in the office [fol. 49] of the county auditor. If in the judgment of the board of county commissioners the entire drainage or any part thereof can be constructed for less money than the amount of any bid submitted therefor, the board may cause such drainage to be constructed, hire the necessary labor and purchase all necessary material for such construction, without letting contracts therefor. Contracts for building bridges or culverts rendered necessary by the construction of such drainage may be let separately and after the drainage is completed. The cost of constructing such bridges or culverts shall be charged in the first instance as part of the cost of drainage and thereafter such bridges and culverts shall be maintained as part of the highway; provided, that the cost of removing, repairing, enlarging or replacing bridges and culverts already existing across the line of a proposed drainage ditch shall not be charged as a part of the drainage (#8, ch. 98, 1905; #8, ch. 134, 1907; #6, ch. 102, 1909; ch. 206, 1917).

#8466. Board May Extend Time for Completion of Contract.—The board of county commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified or to which it may be extended, such board may in its discretion at any time thereafter relet such unfinished portion of any part thereof after not less than five days' notice thereof to the lowest responsible bidder and shall take security as for the original contract. The cost of completing such parts, over

and above the original contract price and the expense of notices and reletting, shall be collected by the board from the first contractor; provided, that in no case shall the [fol. 50] board forfeit and annul a contract without five days' notice to the contractor, if found, and if not found then by written notice left at his last known place of residence in the county (#9, ch. 98, 1905; #9, ch. 134, 1907).

#8467. Assessments for Further Costs.—At any time after the damages arising from the establishment and construction of such drainage are paid and the lands for such drainage are taken, assessments may be made for further costs and expenses of construction. If the contractors are required and agree to take assessment certificates or warrants for their services, assessments need not be made until the completion of the work when an assessment shall be made for the entire balance of cost of construction. including the services of the board of county commissioners, surveyors and assistants, plans and profiles, publication and filing, and other fees, interest on bonds issued or to be issued and all expenses of every kind and nature that contribute to the establishment and construction of the drain and notice of such assessment shall be given by the board of county commissioners in all respects as provided for the first assessment. And such assessment and the certificates issued thereon shall be in like manner perpetual liens upon the tracts assessed, interest-bearing and enforcible as such first assessments and certificates. The board of county commissioners may sell such assessment certificates at not less than par and thereby raise funds to defray the cost of establishment and construction. If there be no damages to be paid before taking the lands for such drainage, or if the damages have been paid by the proceeds of the sale of warrants only one assessment need be made. In any case, in the discretion of the board, several assessments may be [fol. 51] made as the work progresses. Assessments shall be paid to the county treasurer and the money therefrom shall be paid by him to the holders of assessment certificates, or upon the order of the board of county commissioners, for the purpose of the particular drainage (#10, ch. 98, 1905; #10, ch. 134, 1907; #7, ch. 102, 1909).

#8468. Acceptance of Drainage by Board. After the work of construction shall have been fully completed and approved by the state engineer, the drainage may be accepted by the board of county commissioners, by order duly made, and payment shall be made therefor unless in the discretion of the board of county commissioners agreement be made for the partial payments; provided, that final payment shall not be made until the expiration of thirty days after the acceptance of the work and in case an appeal has been taken from the order accepting such work final payment shall not be made until the determination of such appeal; provided, further, that no payment shall be made to any engineer whose employment has not been approved by the state engineer, and no payment shall be made upon any contract for the construction of any such drainage project, unless the same shall have been constructed under the supervision of the state engineer; and provided, further, that nothing in this section shall apply to minor drainage projects. All claims for compensation or expenses for publishing legal notices or supervising the construction of any such drainage project including the per diem and the mileage of the county commissioners, shall be paid from the general fund of the county, and for all such payments the county treasurer shall reimburse the general fund from the assessments herein provided for. (#11, ch. 98, 1905; #11, ch. 134, 1907; #8, ch. 102, 1909; ch. 207, 1917.)

[fol. 52] #8469. Appeals. An appeal shall lie for any final order or determination of the board of county commissioners establishing or denying any proposed drainage; fixing damages occasioned by the taking of lands for drainage or caused by such drainage; fixing the proportion of assessments of benefits; or accepting any drainage to the circuit court of the county in which such drainage is located by any one deeming himself aggrieved by any such order or determination. Written notice of such appeal shall be served upon the board of county commissioners and a bond conditioned to pay all the costs of such appeal, in case the contention of appellant be not sustained in some respect, shall be filed in the office of the clerk of courts, to be approved by him in such amount and with such sureties as

he deems necessary. Upon the service of such notice and the filing of such bond, the county auditor shall transmit to the clerk of courts the petition and all other papers and records in the matter or certified copies thereof, when the convenience of the auditor's office would be seriously impaired by the transmission of the original records, and such matter shall be heard as an original action in the circuit court. No appeal shall operate as a stay of proceedings by the board of county commissioners, but the court may upon the taking of an appeal, for good cause shown issue an order staying the further proceedings by the board of county commissioners until the hearing and determination of such appeal. Before granting such stay, the court shall require an undertaking in sufficient amount and with sufficient surety to the effect that if the order appealed from [fol. 53] be sustained the person upon whose motion the stay is granted shall pay all damages caused by the issuance of such order of stay. Any number of persons interested may join in the same appeal. Appeals shall be in all cases taken within thirty days from the making of the order or determination appealed from. If, on the trial of such action, it be determined that the drainage as petitioned for and established by order of the board is not conducive to the public health, convenience or welfare or is not necessary or practicable for the purpose of draining agricultural lands, the petitioners shall be jointly and severally liable for all the costs thus far incurred. If the contention of the appellant as to the amount of damages or proportion of benefits, the acceptance of the drainage of the practicability of the drainage when the route thereof is varied by the county commissioners over the protest and objection of the petitioners, be sustained in whole or in part, the costs of such trial shall be part of the cost of the drainage. Upon an appeal from an assessment of benefits, the court of jury shall consider not only the relative benefits, to the tract in regard to which the appeal is taken, with reference to the tract taken as a unit, but shall also consider the question as to whether the tract taken as a unit is benefited or not; if benefited, to what extent. (#12, ch. 98, 1905; #12, ch. 134, 1907; #9, ch. 102, 1909.)

#8470. Assessments for Maintenance. For the cleaning and maintenance of any drainage established under the

provisions of this article, assessments may be made upon the landowners affected in the proportion determined for such drainage at any time upon the petition of any person setting forth the necessity thereof, and after due inspection [fol. 54] by the board of county commissioners. Such assessments shall be made as other assessments for the construction of drainage, certificates may be issued thereon and assessments and certificates shall be liens, interest-bearing, and perpetual and enforcible, in all respects as original assessments and may be sold at not less than par by the board of county commissioners, turned over to persons contracting for such cleaning and maintenance or may be collected directly by the board of county commissioners. (#13, ch. 98, 1905; #13, ch. 134, 1907.)

#8471. Assessments Paid in Installments. The owner of any tract of land against which an assessment for drainage is made, who shall, within thirty days after the making of such assessment, file with the county auditor an agreement in writing that in consideration of the right to pay his assessment in installments he will not make any objections to the illegality or irregularity of his assassment, if any there be, and will pay the same with interest as fixed by the board of county commissioners, shall have the privilege of paying such an assessment in ten annual installments, interest payable annually. Assessment certificates shall not issue until after the expiration of the period of filing such agreements with the county auditor, and when issued for assessments to be payable in installments may be issued in coupon form. The first installment shall be payable within ten days after a certified copy of the assessment has been filed, in the office of the county treasurer, and subsequent installments shall be payable one, two, three, four, five, six, seven, eight and nine years from the date of such assessment, re- [fol. 55] spectively, with interest on the whole sum unpaid payable annually at maturity of the several installments. Such subsequent installments shall become delinquent after the expiration of thirty days from the time the same are payable and thereupon a penalty of five per cent shall attach thereto. Provided, that where bonds shall have been issued for the construction of such drainage, as provided in Section 8472, such assessments shall be made payable in

installments sufficient to meet the payment on the bonds, as the same shall become due. Payments of assessments may at any time be received and full discharge thereof given by the county treasurer to any property holder, but after issue of bonds, such payment of assessments can be received only according to the terms of such bonds. (#14, ch. 98, 1905; #14, ch. 134, 1907; #10, ch. 102, 1909.)

#8472. Board May Issue Bonds. The board of county commissioners, whenever it has ordered the establishment of any drainage, shall have authority by resolution to be spread upon its records, to provide for the issuance of bonds in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating or constructing any such drainage. Such word "expenses" shall be construed to mean and cover every item of cost of such drainage from its inception to its completion, such bonds to be payable only out of the funds to be derived from special assessments upon the lands benefited thereby. Such bonds shall bear interest at a rate not exceeding 7% per annum, payable annually and be payable not exceeding twenty years from issue. Such bonds shall be signed by the chairman of the [fol. 56] board of county commissioners and countersigned by the auditor, who shall keep a record of all such bonds. Such bonds shall be issued for the benefit of the particular drainage, numbered, recorded and indexed in the office of the county auditor, and shall in no case be issued for a sum exceeding the benefits to the land affected by such drainage. The board of county commissioners shall have the power to negotiate such bonds at not less than par value, as it may deem best for the interest of all persons affected by such drainage, any premium received on such bonds to be credited to the fund of the particular drainage. Such bonds shall contain a recital that the same are issued pursuant to the authority of this article and that they are to be paid out of the funds to be obtained as herein provided. Assessments shall be made upon all of the lands benefited by such drainage for the payment of the principal and interest of such bonds when the same shall become due. Such assessments may be made by separate assessments for installments of interest and principal or in one proceeding with

but one set of notices. When the assessments are finally fixed the same shall be certified to the county treasurer by the county auditor, and the money paid in thereon shall be received by the county treasurer and paid over to the holders of such bonds. Separate funds shall be kept by the treasurer for each drainage project, and no funds for one drainage project shall be applied to any other drainage. No county shall be liable for the payment of any bonds issued under this article, but such bonds shall be paid only out of the funds derived from the special assessments herein provided for. Such bonds may be made payable at such times as the board of county commissioners shall find for [fol. 57] the best interests of the persons benefited by the drainage, and may be issued for all or any portion of the expenses of such drainage. (#15, ch. 98, 1905; #15, ch. 134, 1907.)

#8474. Further Powers of Board. Where proceedings have been had for the establishment of a ditch, drain, levee, or straightening or enlarging of a natural watercourse under the law as heretofore existing, and the improvement has been established and constructed and assessments made upon the land benefited thereby, or upon any portion thereof, for the cost of such improvement, and where the assessment so made cannot for any reason be enforced, the board shall proceed as in all lands benefited by such improvement in the same manner as if the appraisement and apportionment of benefits had never been made, and it shall proceed in the manner provided in this article, using as a basis the entire cost of such improvement, and in the assessment of such benefits account shall be taken of the amount of assessments, if any, that have been paid by those benefited and credit therefor shall be given accordingly. (#17, ch. 98, 1905; #17, ch. 134, 1907).

#8475. Ditch or Drain May be Declared Nuisance. Any ditch, drain or watercourse, which is now or may hereafter be constructed so as to prevent the surface and overflow water from adjacent lands from entering the same is hereby declared a nuisance and may be abated as such. (#18, ch. 98, 1905; #18, ch. 134, 1907).

#8476. Powers Defined. The powers conferred by this article for establishing and constructing drains shall also

extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed also to straightening, cleaning out and deepening the channels of creeks and streams and constructing, [fol. 58] maintaining, remodeling and repairing levees, dykes and barriers for the purpose of drainage; and the board of county commissioners may relocate or extend the line of any drain if the same is necessary to provide a suitable outlet, and shall cause a survey thereof to be made, but no proceedings affecting the rights of persons or property shall be had under this section except upon notice and the other procedure prescribed herein for the construction of drains. (#19, ch. 98, 1905; #19, ch. 134, 1907).

#8477. Drains Under Charge of County Commissioners. All drains that have been constructed under any law of this state, or that may be constructed under the provisions of this article, shall except as otherwise specifically provided, be under the charge of the board of county commissioners and be by it kept open and in repair. In all cases when any completed drain is or may be situated in more than one county, the care of the portion thereof lying within any county is assigned to the board of county commissioners of such county to be kept open and in repair. The cost of such repairs shall in all cases be assessed, levied and collected in the same manner as provided in this article for the construction of drains originally and in all cases when no assessments of benefits shall have been made, the board of county commissioners having charge of such drain shall make such assessments. (#20, ch. 98, 1905; #20, ch. 134, 1907).

#8478. Board May Make Rules and Regulations. The board of county commissioners may make such rules and regulations on the subject of drainage as it may deem proper, not inconsistent with the provisions of this article, and especially with regard to clearing out and keeping clear [fol. 59] the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage. (#21, ch. 98, 1905; #21, ch. 134, 1907).

#8482. Drains for Towns and Cities. The board of county commissioners shall have authority to establish

drainage for or including the whole or any part of any city or incorporated town, including cities acting under special charter, as provided in this article, and it shall have the same authority with respect to the assessment of damages and benefits within such city or town as in other cases provided for in this article, and like notices to such city or town with respect to the establishment of such drainage and the apportionment and assessment of damages and benefits shall be given as is required by this article to be given to the owner of property damaged or benefited by the establishment or construction of such improvement. #24, ch. 98, 1905; #24, ch. 134, 1907.)

#8485. Compensation of County Commissioners. The county commissioners shall receive for their services four dollars per day for the time actually spent by them in the performance of the duties of their offices under this chapter, publishers of newspapers shall receive for publishing legal notices the same fees as are allowed by law for publishing proceedings of the county commissioners; but the proceedings of the board of county commissioners when acting in any drainage matter under this article shall not be published as a part of its regular proceedings or at all. The county auditor shall charge a reasonable amount, to be fixed by the board, for services, to be paid [fol. 60] into the general fund of the county. Each county commissioner shall have power to administer any oath required in any drainage proceeding. (#27, ch. 98, 1905; #27, ch. 134, 1907; #11, ch. 102, 1909.)

#8486. Notices, How Served. Notice by personal service, as of a summons in a civil action, may be given instead of by publication and posting in all cases where notice is provided for in this article. In any case where notice is required under the provisions of this article and any person affected by the drainage has not been notified, either by publication or personally, and a hearing has been had or determination made, such person may be notified personally or by publication and posting, to show cause at a time and place to be fixed by the board of county commissioners, and to make return or claim damages as in case of the original hearing. Any such omitted person may be brought in on such due notice at any stage of the proceeding, or

after it has been otherwise concluded. The enforcement of any assessment shall not be enjoined for want of the notice provided for in this article, except pending an application to the board of county commissioners for the determination of such matters as to which any person deems himself not bound because of want of notice. (#28, ch. 134, 1907).

#8488. Defects in Proceedings Disregarded. Any defect or irregularity not affecting the substantial rights of parties interested, occurring in any drainage proceeding, shall be disregarded in any action seeking to avoid an assessment or cancel, annul or declare void any such proceeding. And in case the defect is substantial the court shall of its own [fol. 61] motion determine the rights of the parties, validate the proceedings and assess the costs as justice may require, if the court shall find cause for such validation or such action should have been taken in the first instance and all parties interested are before the court. (#29, ch. 98, 1905; #30, ch. 134, 1907.)

#8489. Invalid or Abandoned Proceedings. If any proceedings for the location, establishment or construction of any drain under the provisions of a previous law has been heretofore enjoined, vacated, set aside, declared void, dismissed or voluntarily abandoned, or if any such proceeding or like proceeding under this article be hereafter enjoined, vacated, set aside, declared void, dismissed or voluntarily abandoned in consequence of any error, defect, irregularity or want of jurisdiction affecting the validity of such proceeding or for any cause, the board of county commissioners may nevertheless proceed to locate a drain or drains under the same or different names and in the same or different locations from those described in the invalid or abandoned proceedings under the provisions of this article. In case any new proceeding to be had resulting in the location of a drain in the same or substantially the same location as that described in the invalid or abandoned or dismissed proceeding, and the extent to which the same will contribute to the location, establishment or completion of such new drain. Such value shall be determined at a hearing upon the same notice as the equalization of benefits or assessments, and may at the same time or at

any other time, and the notice of such hearing may be a part of the notice of the hearing upon the equalization of benefits or assessments or separate therefrom, but the [fol. 62] board shall in any case notify all persons interested to show cause why the determination of the board thereupon shall not be final. When finally fixed such value shall become a part of the cost of the new drainage. No use shall be made by the board of county commissioners in the laying out or completion of any drain or ditch under this article of any map, chart, survey, or other work done under any former law or under this article without having paid therefor; and all sums allowed for any work or material or money expended under the provisions of any previous law or under this article shall be paid to the persons who have paid therefor in proportion to the amounts severally paid by such persons. (#33, ch. 134, 1907.)

Exhibit B to Bill of Complaint

Proposed Distribution of Proportional Benefits

District or division	Acres	Units	Per cent of total	
1. Farm lands north of City Limits and North of South Line of Sec. 12-101-50	13,271.09	10,862.30	33.4%	$103,191.85
2. City Lots and Town of Renner lying north of above line	81.20	42.52	0.1%	403.94
3. Farm land and tracts south of above line	2,065.23	2,958.45	9.1%	28,105.28
4. City lots south of above line	361.60	1,372.52	4.2%	13,038.94
5. City of Sioux Falls	.....	3,147.95	7.7%	29,905.52
6. Minnehaha County	.....	2,518.36	7.7%	23,924.42
7. Township roads	.....	1,573.98	4.8%	14,952.81
8. Railroads	.....	4,721.91	14.5%	44,858.15
9. Northern States Power Company	.....	5,351.63	16.5%	50,840.49
Totals	15,722.12	32,549.62	100.0%	$309,221.40

[fol. 63] In the above calculation the Value of One Unit is taken at $9.50.

"Exhibit C" to Bill of Complainant

Drainage Notice

To whom it may concern:

Notice is hereby given that Monday, the 1st day of August, 1921, at 2 o'clock p. m., at the office of the County Auditor of Minnehaha County, South Dakota, at the Court House in the city of Sioux Falls, in said county, has been fixed by the Board of County Commissioners of said county as the time and place for equalizing the proportion of benefits to the several lands, tracts, lots roads, streets, railroad rights-of-way, city water supply and waterworks, city parks and water rights, hydro electric plant, property rights, and interests, embraced within the district of drainage Ditch No. 1 and 2, and benefitted by the construction of said drainage ditch, and that the route and width of said Drainage Ditch No. 1 and 2 shall be as now constructed, and is described as follows:

[fol. 64] Section One

Commencing at a point fifty-eight (58) feet west and ten hundred and thirty-five (1035) feet north of the southeast corner of Section twenty-nine (29), Township one hundred and two (102), Range forty-nine (49) West of the 5th P. M., running thence South parallel to the adjacent highway two thousand and eighty-five (2085) feet to station one hundred and fourteen (114); also commencing at a point six hundred and seventy-four (674) feet North and about thirty-five (35) degrees West of said Station number one hundred and fourteen (114), thence Southeasterly six hundred and seventy-four (674) feet to said station number one hundred and fourteen (114), thence South and parallel to said highway seventy-seven hundred (7,700) feet to station number thirty-seven (37), thence South forty-five (45) degrees, East three thousand seven hundred (3,700) feet to station number zero (0), the same being on high water line, thence South fifty-nine (59) degrees and thirty-six (36) minutes, East four hundred and fifty (450) feet, thence South thirty-one (31) degrees, East to the Big Sioux River, the said line being the center line of said drainage ditch, and is in-

tended to cover the exact location of drainage ditch number 1 as now established and constructed.

Section Two

Commencing at a point ten hundred and thirty-five (1035) feet North and fifty-eight (58) feet West of the Southeast corner of section twenty-nine (29), in Township one hundred and two (102), Range forty-nine (49) the same being the commencement point of section 1, hereinbefore described running thence North five hundred and forty-seven (547) feet, thence North twenty-three (23) degrees, West thirty-three hundred and eighteen (3318) feet to a point fifty-eight (58) feet West of the quarter quarter line in the Northeast quarter section twenty-nine (29), in said township, thence North parallel with and fifty-eight (58) feet West of said quarter quarter through Sections twenty-nine (29), twenty (20), seventeen (17), and a part of Section eight (8), twelve thousand nine hundred and thirty-five (12,935) feet, thence North fifty (50) degrees, East, twenty-seven hundred and thirty-two (2,732) feet to a point thirty-three (33) feet West of the West line of the right-of-way of the Chicago, Milwaukee & St. Paul Ry. Co., in the Northwest quarter of Section nine (9) in said Township, thence Northerly parallel with and thirty-three (33) feet West of said right-of-way line nineteen thousand three hundred and sixty-eight (19,368) feet to a connection with the high water channel of the Big Sioux River in the Southeast quarter of Section twenty (20) in Township one hundred and three (103) North, of Range forty-nine (49) West.

Section Three

Commencing at a point sixteen hundred and forty (1,640) feet East of the center of Section eighteen (18) in Township one hundred and three (103), Range forty-nine (49); running thence North thirty-three (33) degrees West thirty-one hundred fifty-five (3,155) feet to a point sixty (60) feet West of the quarter corner between Sections seven (7) and eight (8) in said Township; thence North parallel with and sixty (60) feet West of the quarter line in Sections seven (7) and six (6) in said Township and in Section thirty-one (31) in Township one hundred and four (104), North of

Range forty-nine (49) to the center line running East and West through said Section thirty-one (31); thence Northeasterly to the creek near the Northeast corner of said Section thirty-one (31), the said line being the center line of said drainage ditch as now established and constructed.

That in addition thereto the Big Sioux River has been straightened and the channel changes made as follows: Channel changes on Sections five (5) and seven (7), Township one hundred and one (101), Range forty-nine (49); Channel changes on Sections thirty-two (32), twenty-nine (29), twenty (20), eighteen (18), seventeen (17), eight (8) and five (5), Township one hundred and two (102), Range forty-nine (49); and Channel changes on Sections thirty-two (32) and twenty-nine (29), Township one hundred and three (103), Range forty-nine (49); the same being in accordance with the lines of said Drainage Ditch as actually constructed and for which the said Board of County Commissioners heretofore assessed condemnation damages; that maps and profiles of said Drainage Ditch are now on file in the office of the County Auditor of said County, to which reference is hereby made.

That there have been included within the drainage area of Drainage Ditch 1 and 2 the entire drainage area of Drainage Ditches No. 1 and No. 2 heretofore established and constructed, and additional territory contiguous thereto which is benefited by the establishment and construction of said Drainage Ditch No. 1 and 2, and that in the judgment of said Board of County Commissioners all of said territory is interdependent, and is considered as one drainage system; that in the determination of the proportion of benefits fixed upon the lands and premises embraced within said drainage area, the amounts of the assessments heretofore made in the matter of Drainage Ditch No. 1 and Drainage Ditch No. 2 have been taken into consideration.

[fol. 65] That in the consideration and assessment of benefits as hereinafter set forth, the Board of County Commissioners have assumed that the one acre of land in square form lying adjacent to and East and South of the Northwest corner of the Northeast quarter (NE ¼) of the Northwest quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section twenty-nine (29), Township one hundred two (102) North, of Range forty-nine (49) West of the 5th

P. M., the North line of said acre of land being on the North line of said Section twenty-nine (29), and the West line of said acre of land being on the North and South quarter line of the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of the said Section twenty-nine (29), owned by Charles E. Kaufmann, is benefitted "one," and taking said acre of land as a unit, the proportion of benefits to each tract of property, land, lots, bridges, roads, streets, railroad rights-of-ways, grades and bridges, city water supply and waterworks and city parks, hydro-electric plants and water rights, townships, City of Sioux Falls and County of Minnehaha, and the description of the tracts of property affected by said drainage, and the names of the owners thereof, as they appear from the records in the office of the Register of Deeds of Minnehaha County, South Dakota, on the date of the filing of the petition herein, was fixed as follows:

The following described land lie in Dell Rapids Township, being Township 104 North, Range 49 West:

Name of owner	Description	Sec.	Acres	Proportion of benefit
Ingebor Olsen,	NW ¼ of SE ¼	29	3.00	1.50
Caroline Thompson and E. F. Thompson,	NE ¼ of SW ¼	29	12.80	6.40
Lars Simonson,	SW ¼ of SW ¼	29	23.00	11.50
C. R. Mattern,	SE ¼ of SW ¼	29	39.75	19.80
J. M. Bruaas,	(except right-of-way of C., M. & St. P. Ry.) S ½ of SE ¼	29	41.00	20.50
J. M. Bruaas,	(except right-of-way of C., M. & St. P. Ry.) N. ½ of NE ¼.	32	43.50	14.80
Mali P. Langness,	(except right-of-way of C., M. & St. P. Ry.) S ½ of NE ¼	32	37.00	13.35
Mali P. Langness,	E ½ of NW ¼	32	58.50	30.30
Lars Simonson,	W ½ of NW ¼	32	70.00	59.90
Mali P. Langness,	N ½ of SW ¼	32	72.00	47.40
Randi A. Florin,	SW ¼ of SW ¼	32	38.00	30.40
Mrs. M. O. Nyhus,	SE ¼ of SW ¼	32	35.00	21.00
Mali P. Langness,	(except right-of-way) the unplatted portion of N ½ of SE ¼	32	31.80	11.30

Name of owner	Description	Sec.	Acres	Proportion of benefit
A. J. Pettingill,	the west 500 feet of tract 9 of the SE ¼	32	2.90	1.20
A. J. Pettingill,	(except a part of St. Olaf's Mill tract as shown in book 5, page 63,) tract 3 of SE ¼	32	3.50	1.40
William J. Milne,	St. Olaf's Mill tract as shown in book 5, of deeds, page 63	32	4.30	1.72
[fol. 66] Columbia Creamery Company,	tract as described in book 59 of deeds, page 70, of SE ¼ of SW ¼	32	0.11	0.10
Lars Simonson,	E ½ of NE ¼	31	47.00	42.30
Hans Nelson,	SW ¼ of NE ¼	31	24.00	21.60
Lars Simonson,	SE ¼ of NW ¼	31	4.00	3.60
P. G. Thompson,	NE ¼ of SW ¼	31	30.50	27.45
Julie L. Moe and Julie L. Hustoft,	NW ¼ of SE ¼	31	40.00	36.00
Ole L. Mule,	S ½ of SW ¼	31	38.00	36.10
P. M. Thompson,	NE ¼ of SE ¼	31	39.00	35.10
P. G. Thompson,	W ½ of SW ¼	31	19.50	18.50
Oluf N. Lyng,	E ½ of SW ¼ of SE ¼ and SE ¼ of SE ¼	31	57.50	54.60

The following described lands in Sverdrup Township, being Township 103 North, Range 49 west:

Name of owner	Description	Sec.	Acres	Proportion of benefit
Ole O. Langness,	(except right-of-way of C. M. & St. P. Ry. Co.) NE ¼ of NW ¼	5	8.60	7.70
Baltic Creamery Company,	tract of land 10½ rods east and west by 15 rods north and south, in the NE corner of the NW ¼ of NW ¼	5	0.85	0.90
Oluf N. Lyng,	NW ¼ of NW ¼ (except above tract)	5	32.80	28.80
Gunerius Thompson,	SW ¼ of NW ¼	5	33.00	24.00
Halvor Gunderson,	(except right-of-way of C. M. & St. P. Ry. Co.) SE ¼ of NW ¼	5	9.50	7.10

Name of owner	Description	Sec.	Acres	Proportion of benefit
Gunerius Thompson,	tract 7 of SW ¼	5	25.50	17.85
John Langness,	tract 1 of SW ¼	5	8.00	3.20
A. J. Florin,	tract 2 of SW ¼	5	3.90	1.60
Gunerius Thompson,	tract 3 of SW ¼	5	1.60	0.60
Gunerius Thompson,	tract 4 of SW ¼	5	1.00	0.70
Gunerius Thompson,	tract 5 of SW ¼	5	34.40	13.80
Gunerius Thompson,	tract 6 of SW ¼	5	31.00	21.70
Lena C. Langness,	(except right-of-way of C. M. & St. P. Ry. Co.) NE ¼ of SW ¼	5	27.00	10.80
J. O. Langness,	(except right-of-way of C. M. & St. P. Ry. Co. and the north 3 acres), SW ¼ of SE ¼	5	3.00	2.40
Mary Lee, Libbie Lang, Carrie Lee, Etta M. Lee, Tilda Lee, Mabel O. Lee, and Thomas E. Lee,	NE ¼ of NE ¼ and S ½ of NE ¼	6	112.81	101.50
John Williamson,	NW ¼ of NE ¼	6	38.87	38.80
Even O. Fossum,	NE ¼ of NW ¼	6	31.00	31.00
Lima Hanson,	N ½ of N ½ of SE ¼ of NW ¼	6	5.00	5.00
K. P. Sorklimo,	as described in book 53 of deeds, p. 434, lot 1 of SE ¼ of NW ¼	6	14.70	12.50
Knut Larsen,	W ½ of NW ¼	6	2.00	2.00
Andrew L. Berg,	NW ¼ of SW ¼	6	19.80	19.80
Gunerius Thompson,	NE ¼ of SW ¼, and that part of the SE ¼ of NW ¼ lying south of lot 1	6	48.50	48.50
Andrew L. Berg,	S ½ of SW ¼	6	56.80	56.80
Mary Lee, Libbie Lang, Carrie Lee, Etta M. Lee, Tilda Lee, Mabel O. Lee, and Thomas E. Lee,	N ½ of SE ¼	6	80.00	80.00
Gunerius Thompson,	S ½ of SE ¼	6	80.00	80.00
Gunerius Thompson,	N ½ of NE ¼	7	79.00	79.00
O. J. Ustrad and H. O. Ustrad,	NE ¼ of NW ¼	7	40.00	40.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
O. J. Ustrad and O. O. Sando,	SE ¼ of NW ¼	7	40.00	40.00
Knut Larsen,	S ½ of NW ¼	7	36.30	36.30
Julia Johnson,	S ½ of NE ¼	7	74.00	65.20
M. Florin,	NE ¼ of SW ¼	7	36.00	34.20
Ole O. Florin,	NW ¼ of SW ¼, and S ½ of SW ¼	7	73.50	62.60
John Thompson,	SW ¼ of SE ¼	7	39.00	39.00
A. A. Aas,	tract 2 of SE ¼	7	13.25	13.25
John Risvold,	tract 1 of SE ¼	7	3.00	1.20
Ingeborg Risvold,	tract 3 of SE ¼	7	12.50	5.00
Peder P. Risvold,	tract 4 of SE ¼	7	4.50	1.80
Julia Johnson,	N ½ of SE ¼	7	72.50	65.20
J. P. Risvold,	north 25 acres of SE ¼ of NE ¼	8	20.00	10.00
P. P. Risvold,	south 15 acres of SE ¼ of NE ¼	8	15.00	7.50
J. P. Risvold,	(except right-of-way of C. M. & St. P. Ry. Co.) SW ¼ of NE ¼	8	35.00	21.00
S. E. Kringen,	(except right-of-way of C. M. & St. Paul Ry Co.) N ½ of NE ¼	8	28.80	17.30
C. M. Christianson, Halvor Gunderson and Marie Langness,	NE ¼ of NW ¼	8	40.00	32.00
Gunerius Thompson,	NW ¼ of NW ¼	8	30.00	27.00
J. O. Langness,	SW ¼ of NW ¼	8	35.00	31.50
Jens Erickson,	SE ¼ of NW ¼ and NE ¼ of SW ¼	8	80.00	64.00
Sara Vollan,	NW ¼ of SW ¼	8	40.00	26.00
A. P. Risvold,	north 30 acres of SW ¼ of SW ¼	8	30.00	12.00
J. P. Risvold,	south 10 acres of SW ¼ of SW ¼	8	10.00	4.00
A. P. Risvold,	N ½ of SE ¼ of SW ¼	8	20.00	16.00
P. P. Risvold,	S ½ of SE ¼ of SW ¼	8	20.00	16.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
P. P. Risvold,	north 11 acres of that part east of the right-of-way of C. M. & St. P. Ry. Co., of NW ¼ of SE ¼	8	11.00	6.60
A. P. Risvold,	(except as above, and except right-of-way of C. M. & St. P. Ry. Co.) W ½ of SE ¼	8	64.00	39.60
P. P. Risvold,	NE ¼ of SE ¼	8	39.00	19.50
Lars Paulson, G. P. Wilson and G. T. Nyhus,	SE ¼ of SE ¼	8	37.00	22.20
Sara Vollan,	SW ¼ of NW ¼ and NW ¼ of SW ¼	9	22.50	11.25
T. H. Nyhus,	SW ¼ of SW ¼	9	30.00	15.00
Peder Risvold,	NE ¼ of NW ¼	16	8.40	4.20
John Johnson,	NW ¼ of NW ¼	16	38.00	19.00
P. A. Risvold,	S ½ of NW ¼	16	57.50	28.70
Gilbert Brende,	SW ¼	16	141.00	70.50
Ole Brende,	SW ¼ of SE ¼	16	3.00	1.50
G. T. Nyhus,	NE ¼ of NE ¼	17	36.00	21.60
Gilbert Brende and Ole Brende,	SE ¼ of NE ¼	17	34.00	20.40
Sara Vollan,	(except right-of-way of C. M. & St. P. Ry. Co.) W ½ of NE ¼	17	69.00	41.40
G. T. Gunderson,	NE ¼ of NW ¼ and S ½ of N W ¼	17	120.00	100.00
Peder P. Risvold,	NW ¼ of NW ¼	17	35.00	31.50
Ole O. Florin,	(except tracts numbers 1 to 18) SW ¼	17	4.50	3.10
G. T. Nyhus,	tract 1 of SW ¼	17	6.00	6.00
Thos. O. Brende, Thorston Brende and Joseph O. Brende,	tract 2 of SW ½	17	1.75	0.55
Ingeberg Gunderson and G. T. Gunderson,	tracts 3 and 4 of SW ¼	17	6.00	1.80
Olaf B. Florin,	tract 5 of SW ¼	17	4.00	1.20
Ingeborg Gunderson and Gilbert Gunderson,	tract 6 SW ¼	17	1.75	0.55
Clara Schneider,	tract 7 of SW ¼	17	2.00	0.60

Name of owner	Description	Sec.	Acres	Proportion of benefit
T. N. Nyhus,	tract 8 of SW ¼	17	3.00	0.90
Sara Vollan,	tract 9 of SW ¼	17	3.00	0.90
E. G. Brende,	tracts 10 and 12 of SW ¼	17	4.75	1.42
Iver Paulson,	tract 11 of SW ¼	17	1.50	0.45
G. T. Gunderson,	tract 13 of SW ¼	17	16.00	4.80
Ingeborg Gunderson and Gilbert Gunderson,	tracts 14, 15 and 16 of SW ¼	17	83.72	83.72
Nidros Norwegian Evangelical Lutheran Congregation,	tract 17 of SW ¼	17	8.25	8.25
Knud Thompson and Jacob Olsen,	tract 18 of SW ¼	17	1.00	0.30
B. Peterson,	(except right-of-way of C. M. & St. P. Ry. Co.) W ½ of SE ¼	17	63.00	50.40
Erik Oyen,	NE ¼ of SE ¼	17	32.00	19.30
[fol. 67] Mall P. Johnson,	SE ¼ of SE ¼	17	34.00	23.80
P. P. Risvold,	tract 1 of NE ¼	18	5.50	2.70
Ole J. Stordahl,	tract 2 of NE ¼	18	1.90	1.90
John O. Aasen,	(except tracts 1 and 2) NE ¼	18	100.50	100.50
Andrew A. Aas,	NE ¼ of NW ¼	18	24.20	24.20
Ingeborg Gunderson,	tract 4 of SE ¼	18	6.50	1.90
O. J. Ustrad,	NE ¼ of SE ¼ (except tract 4)	18	15.50	8.80
Martha R. Roberts,	NE ¼ of NE ¼	20	33.50	23.25
B. G. Flamoe,	(except right-of-way of C. M. & St. P. Ry. Co.) NW ¼ of NE ¼	20	35.00	35.00
Haagen O. Skatvold,	(except right-of-way of C. M. & St. P. Ry. Co.) S ½ of NE ¼	20	66.00	47.40
J. J. Flamoe,	tract as described in book 67 of deeds, p. 106, in NE ¼ of NW ¼	20	10.00	10.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
Frederick Johnson and Jens Johnson and Torbjorn Olson, tract 1 of the NW ¼		20	6.00	1.80
Bertha Peterson, Alice C. Thompson, John O. Thompson, Wm. H. Thompson, Fred R. Thompson, Reuben V. Thompson, Mabel J. Thompson and Carl M. Thompson, (except above described two tracts), NE ¼ of NW ¼		20	18.00	9.30
John J. Almlie, Jr., NW ¼ of NW ¼		20	6.00	1.80
G. G. Flamoe, SE ¼ of NW ¼		20	19.00	5.70
H. O. Skatvold, NW ¼ of SE ¼		20	20.00	6.00
Peter Paulson, (except right-of-way of C. M. & St. P. Ry. Co., and except tract 1) NE ¼ of SE ¼ and and S ½ of SE ¼		20	88.50	69.25
G. T. Nyhus, tract 1 of SE ¼		20	1.50	0.45
Martha R. Roberts, NE ¼		21	42.50	21.25
Martha R. Roberts, NW ¼		21	155.00	92.70
Peter Paulson, W ½ of SW ¼		21	74.50	67.00
Erick G. Brende, E ½ of SW ¼		21	77.50	65.00
Erick G. Brende, SE ¼		21	105.00	73.00
G. T. Nyhus, (except a 5 acre tract 10 rods wide on east end and no rods wide on west end), NE ¼		28	136.00	91.10
E. G. Brende, a 5 acre tract as above described in NE ¼		28	3.00	1.80
O. S. Thompson, (except right-of-way of C. M. & St. P. Ry. Co.), NW ¼		28	136.50	116.50
O. S. Thompson, (except right-of-way of C. M. & St. P. Ry. Co.), N ½ of SW ¼		28	73.00	69.50
G. T. Nyhus, east 19 acres of NW ¼		28	18.00	16.20
Ole Peterson, (except right-of-way of C. M. & St. P. Ry. Co., and except W 1.75 acres of E ½ of SW ¼ of SW ¼), W ½ of SW ¼, of SW ¼		28	16.00	16.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
O. S. Thompson,	E 18.25 acres of E ½ of SW ¼ of SW ¼	28	18.00	18.00
T. S. Roberts,	SE ¼ of SW ¼	28	39.00	39.00
T. S. Roberts,	SW ¼ of SE ¼	28	39.00	39.00
Nils E. Eggen,	SE ¼ of SE ¼	28	34.00	20.40
G. T. Nyhus,	N 3.50 acres of SE ¼	28	3.50	2.45
Erick O. Eggen,	(except N 3.50 acres), N ½ of SE ¼	28	73.00	51.00
Ole O. Eggen,	NW ¼ of SW ¼, except a tract in the NW corner thereof, 26 rods east and west and 3 rods north and south	27	3.00	1.80
E. O. Eggen and D. D. Russell,	W ½ of SW ¼ of SW ¼	27	8.00	5.60
O. S. Thompson,	(except right-of-way of C. M. & St. P. Ry. Co.), tract 3 of NE ¼	29	86.00	72.40
Joseph C. Thompson,	tract 2 of NE ¼	29	20.20	6.06
Bertha Peterson, Alice C. Thompson, John O. Thompson, Wm. H. Thompson, Fred R. Thompson, Reuben V. Thompson, Mabel Thompson and Carl Thompson,	tract 1 of NE ¼	29	44.00	13.20
A. C. Thompson, J. O. Thompson, William Henry Thompson, F. R. Thompson, R. V. Thompson, M. J. Thompson, and Carl Melvin Thompson,	tracts 1 and 2 of NW ¼	29	3.00	2.40
O. S. Thompson,	N ½ of SE ¼ and SW ¼ of SE ¼	29	85.00	45.50
Ole Peterson,	SE ¼ of SE ¼	29	36.00	36.00
Andrew J. Aasen,	N ½ of NE ¼ and SW ¼ of NE ¼	32	104.00	62.70
Bertha Peterson, Alice C. Thompson, John O. Thompson, William Thompson, Fred R. Thompson, Mabel Thompson, and Carl Thompson,	N ½ of SE ¼ of NE ¼	32	20.00	20.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
Joseph C. Thompson,	S ½ of SE ¼ of NE ¼	32	20.00	20.00
Andrew J. Aasen,	E ½ of NW ¼	32	8.50	2.55
Thomas Hendrickson,	E ½ of SW ¼	32	40.00	12.00
Margaret Finnegan,	SE ¼ of SE ¼	32	39.00	39.00
John Finnegan,	SW ¼ of SE ¼	32	33.00	10.00
James L. Finnegan,	N ½ of SE ¼	32	74.00	53.00
Gurrine Petersen,	S ½ of NE¼	33	70.00	42.00
Martha R. Roberts, John H. Roberts and Thomas S. Roberts,	NE ¼ of NE ¼	33	29.00	17.40
Thomas Roberts,	NW ¼ of NE ¼	33	39.00	39.00
Thomas Roberts,	NE ¼ of NW ¼	33	39.00	39.00
A. J. Aasen, (except right-of-way of C. M. & St. P. Ry. Co.),	NW ¼ of NW ¼	32	35.00	35.00
Bertha Peterson, Alice C. Peterson, John O. Thompson, Fred Thompson, Reuben V. Thompson and Carl Thompson, (except right-of-way of C. M. & St. P. Ry. Co.),	SW ¼ of NW ¼	33	35.00	35.00
Gurrine Petersen,	SE ¼ of NW ¼	33	40.00	34.00
Joseph C. Thompson, (except right-of-way of C. M. & St. P. Ry.),	NW ¼ of SW ¼	33	35.00	35.00
Thomas Hendrickson and B. B. Hendrickson, (except right-of-way of C. M. & St. P. Ry. Co.),	SW ¼ of SW ¼	33	34.00	34.00
Anne O. Haugen, Amanda Haugen and Jennie A. Haugen,	E ½ of SW ¼	33	79.00	69.10
Gurrine Petersen,	SE ¼	33	152.00	76.20
Gurrine Petersen,	W ½ of SW ¼	33	5.50	2.20

The following described lands in Mapleton Township, being Township 102 North, Range 49 West:

Name of owner	Description	Sec.	Acres	Proportion of benefit
P. M. Smith,	W ½ of NW ¼	3	38.00	15.20
Julia Anderson, Ginna Anderson, Joseph Anderson and Anna Anderson,	NW ¼ of SW ¼	3	4.50	2.70
John Sittig,	E ½ of NE ¼	4	73.00	29.20
Ole O. Eggen,	W ½ of NE ¼	4	73.00	36.50
Gurrine Petersen,	E ½ of NW ¼	4	78.00	62.20
Ole Aspaas, (except right-of-way of C. M. & St. P. Ry. Co.),	W ½ of NW ¼	4	67.00	60.30
Martin H. Oyen and C. H. Oyen, (except right-of-way of C. M. & St. P. Ry. Co.),	W ½ of SW ¼	4	69.00	69.00
Ole T. Nessen,	NE ¼ of SW ¼	4	40.00	36.00
A. P. Brende,	SE ¼ of SW ¼	4	38.00	34.20
Ole T. Nessen,	SE ¼	4	132.00	79.20
Ole T. Aaspas,	E ½ of NE ¼	5	74.50	62.50
O. O. Gilseth,	NW ¼ of NE ¼ and W ¾ of SW ¼ of NE ¼	5	66.00	44.40
John Brekke,	E ½ of SE ¼ of SW ¼ of NE ¼	5	1.50	0.45
John Brekke,	SE ¼ of NE ¼ of SW ¼ of NE ¼	5	2.00	0.60
O. O. Gilseth,	NE ¼ of NE ¼ of SW ¼ of NE ¼	5	1.50	0.45
O. O. Gilseth, (except right-of-way of C. M. & St. P. Ry. Co.)	NW ¼	5	29.50	29.50
P. J. Marakergaard, (except right-of-way of C. M. & St. P. Ry. Co.),	SW ¼	5	29.00	24.80
E. O. Eveiebak and Olaf Gilseth,	tract 1 of SE ¼	5	9.30	9.30
John Thompson,	tract 2 of SE ¼	5	4.20	3.70
School District Number Two,	tract 3 of SE ¼	5	1.00	0.80
[fol. 68] C. H. Oyen and M. H. Oyen, (except right-of-way of C. M. & St. P. Ry. Co. and except tracts 1, 2 and 3 above),	SE ¼	5	144.30	130.60

Name of owner	Description	Sec.	Acres	Proportion of benefit
Martin H. Oyen,	E ½ of NE ¼, and that part of NW ¼ of NE ¼ east of C. M. & St. P. Ry., except right-of-way of said railway	8	80.00	80.00
J. L. Ingalls,	north 50 rods of that part west of the river of the W ½ of NE ¼	8	6.00	2.40
Ole Gunderson,	that part south and west of the right-of-way of the C. M. & St. P. Ry. Co., of the W ½ of NE ¼, except the north 50 rods of that part west of the river	8	59.00	59.00
Ole Gunderson,	NW ¼	8	74.00	30.60
Iver Nelson,	NW ¼ of SW ¼, except SE ¼ of SE ¼ of NW ¼ of SW ¼	8	11.00	4.40
M. O. Bonrud,	SE ¼ of SE ¼ of NW ¼ of SW ¼	8	2.50	1.00
Jonas Oleson,	SW ¼ of SW ¼	8	33.00	28.20
Ole Gunderson,	E ½ of SW ¼	8	79.00	75.40
Ole Gunderson,	W ½ of SE ¼	8	74.00	74.00
C. H. Renner,	SE ¼ of SE ¼	8	38.00	38.00
School District Number Two,	one acre in square form in the NW corner of NE ¼ of SE ¼	8	1.00	1.00
Nellie A. Walkins,	NE ¼ of SE ¼, except above described one acre tract, and except right-of-way of C. M. & St. P. Ry. Co.	8	34.00	34.00
Andrew P. Brende,	N ½ of NE ¼	9	48.00	43.20
Ole T. Nessan,	NE ¼ of NW ¼	9	30.00	27.00
Andrew P. Brende,	SE ¼ of NW ¼	9	37.00	37.00
Alfred Christianson,	W ½ of NW ¼, east of C. M. & St. P. right-of-way	9	69.00	69.00
M. H. Oyen,	W ½ of NW ¼ west of right-of-way of C. M. & St. P. Ry. Co.	9	3.00	3.00
Alfred Christiansen,	S ½ of NE ¼	9	37.20	18.40

Name of owner	Description	Sec.	Acres	Proportion of benefit
C. H. Renner, W ½ of SW ¼, except right-of-way of C. M. & St. P. Ry. Co. and except the Town of Renner		9	68.00	68.00
Jonas Olsen, E ½ of SW ¼, except Town of Renner		9	74.50	74.50
Jonas Olsen, S ½ of SE ¼		9	17.50	10.50
Christian Christianson, N ½ of SE ¼		9	29.50	17.20
Jonas Olsen, NW ¼ of NE ¼		16	27.00	16.20
Barney Finnegan, SE ¼ of NE ¼		16	12.00	9.60
Barney Finnegan, SW ¼ of NE ¼		16	38.50	30.80
John Bliss, E ½ of NW ¼		16	78.00	74.20
Leonard Renner, (except right-of-way of C. M. & St. P. Ry. Co.), W ½ of NW ¼		16	73.00	73.00
Mary P. Brende, (except right-of-way of C. M. & St. P. Ry. Co.), NW ¼ of SW ¼		16	37.00	33.30
Ole O. Volden, (except right-of-way of C. M. & St. P. Ry. Co.), SW ¼ of SW ¼		16	35.00	31.50
Ole O. Volden and Thomine Volden, SE ¼ of SW ¼		16	36.00	14.40
Michael P. Brende, NE ¼ of SW ¼		16	40.00	36.00
Mary P. Brende, NW ¼ of SE ¼		16	35.00	14.00
S. P. Brende, SW ¼ of SE ¼		16	22.00	8.80
J. P. Brende and Melvin M. Brende, NE ¼ of SE ¼		16	5.00	2.00
F. I. Renner, E ½ of NE ¼		17	76.00	76.00
Gertie R. Petersen, NW ¼ of NE ¼ and N ½ of SW ¼ of NE ¼		17	54.00	54.00
Iver R. Petersen, S ½ of SW ¼ of NE ¼		17	18.00	18.00
Gertie R. Petersen, NE ¼ of NW ¼		17	39.00	39.00
Gertie R. Petersen, east 13 acres of the N ½ of SE ¼ of NW ¼		17	13.00	13.00
Iver R. Petersen, east 13 acres of the S ½ of SE ¼ of NW ¼		17	13.00	13.00
Bernt Mekvold, west 26.27 acres of SE ¼ of NW ¼		17	26.67	26.67

Name of owner	Description	Sec.	Acres	Proportion of benefit
Bernt Mekvold,	SW ¼ of NW ¼	17	35.00	18.40
Ingevord Petersen,	NW ¼ of NW ¼	17	38.50	15.40
C. C. Fleischer,	N ½ of SW ¼ and SE ¼ of SW ¼	17	114.00	92.60
Nels I. Nelson,	W ½ of SW ¼ of SW ¼	17	20.00	6.00
T. P. Horton,	E ½ of SW ¼ of SW ¼	17	14.00	4.20
C. J. Orstod,	W ½ of SE ¼	17	73.00	37.00
Jonas Olsen,	E ½ of SE ¼	17	76.50	76.50
Jonas Olsen,	SE ¼ of SE ¼	7	1.50	0.60
Ivor R. Petersen,	NE ¼ of NE ¼	18	3.00	1.20
Bernt Mekvold,	SE ¼ of NE ¼	18	12.00	4.80
C. E. Fleischer,	NE ¼ of SE ¼	18	7.00	3.50
Nels I. Nelson,	SE ¼ of SE ¼	18	12.00	6.00
W. O. Quincy,	E ½ of NE ¼	19	8.50	4.25
W. O. Quincy,	W ½ of NW ¼	20	67.00	34.00
Albert N. Allis,	E ½ of NW ¼	20	79.00	61.00
Albert N. Allis,	W ½ of NE ¼	20	72.00	72.00
Henry J. Schimmel,	NE ¼ of NE ¼	20	38.00	38.00
O. S. Pender,	SE ¼ of NE ¼	20	39.00	39.00
R. J. Huston,	N ½ of SW ¼	20	68.50	59.66
Charles E. Kaufmann,	S ½ of SW ¼	20	63.00	54.80
R. J. Huston,	NW ¼ of SE ¼	20	36.00	36.00
O. S. Pender,	E ½ of SE ¼ and SW ¼ of SE ¼	20	108.00	94.40
Paul H. Brende and Martha Brende,	NW ¼ of SW ¼, except right-of-way of C. M. & St. P. Ry. Co.	21	34.00	27.20
O. S. Pender,	SW ¼ of SW ¼, except right-of-way of C. M. & St. P. Ry. Co.	21	37.00	29.60
Michael P. Brende,	E ½ of SW ¼	21	80.00	64.00
E. Larsen,	NW ¼, except right-of-way of C. M. & St. P. Ry. Co.	21	142.00	92.00
Ole O. Volden and Thomine Volden,	NW ¼ of NE ¼	21	13.50	5.40
Alfred Christiansen,	SW ¼ of NE ¼	21	9.00	5.40
Michael P. Brende,	W ½ of SE ¼	21	29.00	23.20

Name of owner	Description	Sec.	Acres	Proportion of benefit
F. H. Woods,	W ½ of NE ¼	28	6.50	5.20
J. A. Erickson,	NW ¼, except right-of-way of C. M. & St. P. Ry. Co.	28	153.00	122.40
Alfred Christiansen,	SW ¼, except right-of-way of C. M. & St. P. Ry. Co.	28	151.00	135.20
Frank Rogers,	W ½ of SE ¼	28	20.00	16.80
Charles E. Kaufmann,	NE ¼	29	143.50	130.40
Charles E. Kaufmann,	NE ¼ of NW ¼	29	36.00	36.00
Carry Ericson and John A. Ericson,	W ½ of NW ¼	29	29.00	20.60
M. P. Brende and S. P. Brende,	tract 1 of NW ¼	29	28.50	24.30
M. P. Brende and S. P. Brende,	except tract 1, SE ¼ of NW ¼	29	5.50	5.50
M. P. Brende and S. P. Brende,	tract 1 of SW ¼	29	4.20	1.26
Ole O. Eggen,	tract 2 of SW ¼	29	26.80	26.80
Carrie Erickson and John Erickson,	W ½ of SW ¼, except right-of-way of W. & S. F. Ry. Co.	29	23.00	23.00
Ellen Berg and Mary Schodjt,	SE ¼ of SW ¼, except right-of-way of W. & S. F. Ry. Co.	29	32.00	32.00
M. Schodjt and O. P. Schodjt,	SW ¼ of SE ¼	29	33.50	33.50
School District Number 17,	a tract 8 rods north and south by 10 rods east and west, in the SE corner of the NW ¼ of SE ¼	29	0.50	0.50
Mary Schodjt and Ole P. Schodjt,	NW ¼ of SE ¼, except tract above described	29	38.50	38.50
C. E. Kaufmann,	NE ¼, SE ¼	29	33.00	33.00
State of South Dakota,	SE ¼ of SE ¼	29	33.00	9.90
Knut O. Jellum,	SW ¼ of SE ¼	31	10.50	10.50

Name of owner	Description	Sec.	Acres	Proportion of benefit
G. E. Eggen, Gura Eggen, Ole E. Moen, Gurrine E. Moen and Ed E. Moen,	E ½ of NE ¼	31	11 00	11 00
K. O. Jellum,	E ½ of SE ¼	31	76 00	76 00
G. E. Eggen, Gura Eggen, Ole E. Moen, Gurrine E. Moen and Ed E. Moen,	N ½ of NW ¼, and SW ¼ of NW ¼, except right-of-way of W. & S. F. Ry. C-.	32	102 00	102 00
Ezra M. Shotwell,	north 3 acres of S ½ of SE ¼ of NW ¼	32	2 50	2 50
W. H. Lyon,	south 5 acres of north 8 acres of S ½ of SE ¼ of NW ¼	32	4 50	4 50
Thomas Paulson,	south 2 acres of N ½ of S ½ of SE ¼ of NW ¼	32	1 50	1 50
[fol. 69]				
N. E. W. Brakke,	S ½ of S ½ of SE ¼ of NW ¼	32	2 00	2 00
J. H. Whitman,	N ½ of SE ¼ of NW ¼, lying west of river	32	4 00	4 00
State of South Dakota	N ½ of SE ¼ of NW ¼ lying east of river	32	13 00	13 00
K. O. Jellum,	SW ¼	32	128 00	128 00
State of South Dakota,	E ½ of NE ¼	32	64 00	59 00
Mary Schodjt and Ole P. Schodjt	NW ¼ of NE ¼	32	40 00	22 00
Joseph H. Whitman,	SW ¼ of NE ¼, except right-of-way of W. & S. F. Ry. Co.	32	37 50	37 50
J. E. Colton,	NW ¼ of SE ¼, except right-of-way of W. & S. F. Ry. Co.	32	36 00	36 00
Thos. S. Nolen	SW ¼ of SE ¼ except right-of-way of W. & S. F. Ry Co.	32	36 50	36 50
State of South Dakota,	E ½ of SE ¼	32	73 00	73 00
Francis A. Miller,	N ½ except right-of-way of C. M. & St. P. Ry. Co.	33	141 50	133 70
State of South Dakota,	N ½ of SW ¼, except right-of-way of C. M. & St. P. Ry Co	33	70 00	70 00

Name of owner	Description	Sec.	Acres	Proportion of benefit
O. Benson, S ½ of SW ¼, except right-of-way of C. M. & St. P. Ry. Co		33	71.00	71.00
O. Benson, W ½ of SE ¼		33	1.50	1.50

The following described lands in Wayne Township, being Township 100 North, Range 50 west:

Name of owner	Description	Sec.	Acres	Proportion of benefit
Lottie Neister, Frank Neister and Ethel F. Neister, NE ¼, except right-of-way of C. St. P. M. & O. Ry. Co		13	103.80	124.60
Hayward Investment Company, E ½ of SW ¼, except right-of-way of C., St. P. M. & O. Ry. Co		13	26.00	26.00
Louie Liesinger, that part of the SE ¼ south of the right-of-way of the C., St. P. M. & O. Ry. Co		13	63.00	75.60
W. H. Lyon that part of the E ½ of SE ¼ north of and excepting the right-of-way of the C., St. P. M. & O. Ry. Co		13	34.00	41.00
Lottie Neister, Frank Neister and Ethel F. Neister, that part of the W ½ of SE ¼ north of the right-of-way of the C., St. P. M. & O. Ry. Co		13	37.00	44.50
Hayward Investment Company, SE ¼ of NW ¼		13	2.00	2.00
A. M. Larkey, NE ¼ of NE ¼		12	1.00	1.00
Theodore A. Mosholder, SE ¼ of NE ¼		12	7.50	7.50
David R. Howie and J. B. Petersen, NE ¼ of SE ¼		12	2.50	2.50
Louis P. Caldwell, NE ¼ of NE ¼, except a tract beginning at NE corner, thence west 310 feet, thence south 120 feet, thence south				

Name of owner	Description	Sec.	Acres	Proportion of benefit
	70 degrees, east 320 feet, thence north 20 degrees east 52, feet, thence north 180 feet to beginning	24	26.70	32.00
Charlie Gibson,	the tract last above described in the NE corner	24	0.78	1.00
William Gage,	NW ¼ of NE ¼	24	34.50	41.50
C. L. Ferguson,	S ½ of NE ¼	24	35.50	42.50
George Parsons,	N ½ of NE ¼	25	15.00	15.00
Harry A. Chetham,	S ½ of NE ¼	25	20.00	16.00
Harry A. Chetham,	N ½ of SE ¼ and SE ¼ of SE ¼	25	25.00	20.00

The following described lands in Sioux Falls Township, being Township 101 North, Range 49 West.

Name of owner	Description	Sec.	Acres	Proportion of benefit
M. Clennon and Josephine Clennon,	SE ¼ of NE ¼	4	2.00	2.00
Fred Nelson,	W ½ of NE ¼	4	45.00	45.00
Fred Nelson,	SE ¼ of NW ¼	4	40.00	40.00
State of South Dakota,	NE ¼ of NW ¼ and W ½ of NW ¼, except right-of-way of C. M. & St. P. Ry. Co.	4	110.90	110.90
State of South Dakota,	SE ¼, except right-of-way of C. M. & St. P. Ry. Co.	4	85.50	85.00
Mary C. Brace,	W ½ of SE ¼, except tracts 1 and 2	4	47.50	47.50
Mary C. Brace,	NE ¼ of SE ¼, except the NE ¼ thereof	4	2.90	2.90
Hans Ruvold,	E ½ of NE ¼, except right-of-way of Watertown & Sioux Falls Ry. Co.	5	68.60	68.60
O. Benson,	NW ¼ of NE ¼	5	38.70	35.20
Sam Helm,	SW ¼ of NE ¼	5	40.00	40.00
A. C. Jenson,	NE ¼ of NW ¼	5	26.80	21.20
D. A. Scott,	NW ¼ of NW ¼	5	36.80	36.80

Name of owner	Description	Sec.	Acres	Proportion of benefit
F. H. Johnson	SW ¼ of NW ¼	5	32.00	32.00
Hans Ruvold,	SE ¼ of NW ¼	5	40.00	23.20
F. H. Johnson,	NW ¼ of SW ¼	5	34.00	34.00
Hans Ruvold,	NE ¼ of SW ¼	5	40.00	38.80
Mary C. Brace,	S ½ of SW ¼, except blocks 34, 35, 49, 50, and 61 of the North Boulevard addition	5	65.50	65.50
Mary C. Brace,	S ½ of SE ¼, except blocks 4, 6, 9, 13 and 29 of the North Boulevard Addition	5	65.00	65.00
Hans Ruvold,	NW ¼ of SE ¼	5	40.00	40.00
State of South Dakota,	NE ¼ of SE ¼, except right-of-way of Watertown & Sioux Falls Ry. Co.	5	35.00	35.00
D. A. Scott,	N ½ of NE ¼	6	65.80	65.80
F. H. Johnson,	S ½ of NE ¼	6	65.00	65.00
F. H. Johnson,	N ½ of SW¼	6	19.00	19.00
George E. Barkley,	S ½ of SW ¼	6	38.00	38.00
George E. Barkley,	SW ¼ of SE ¼	6	32.00	32.00
A. G. Erskine,	tract 1 of SE ¼	6	19.50	19.50
F. G. Carpenter,	tract of 2 of SE ¼	6	11.50	11.50
F. H. Johnson,	½ of SE ¼	6	75.00	75.00
F. G. Carpenter	E ½ of NE ¼	7	79.00	79.00
H. O. Gates and E. J. Sharon,	E ½ of NE ¼	7	77.00	77.00
H. O. Gates and E. J. Sharon,	E ½ of NW ¼	7	55.00	55.00
A. M. Lackey,	NW ¼ of NW ¼	7	34.00	34.00
F. H. Johnson,	SW ¼ of NW ¼	7	10.00	10.00
R. J. Ford,	NW ¼ of SW ¼	7	36.00	36.00
J. A. Redfield,	SW ¼ of SW ¼, except the SW ¼ thereof	7	26.00	26.00
Peter Weinacht,	SW ¼ of SW ¼ of SW ¼	7	3.00	3.00
H. A. Burtch and Henry Brockhouse, Jr.,	that part in SE ¼ north of block 37, Meredith's Second addition south of the center line of Mulberry street extended and between the center lines of Harvard Street and Williams avenue	7	1.00	0.40

Name of owner	Description	Sec.	Acres	Proportion of benefit
E. J. Sharon and F. L. Blackman,	the unplatted part of SE ¼ except above described tract	7	4.00	1.60
I. E. Kosier,	that part of tract 1 of SW ¼ west of block 59, Meredith's Second addition, and between the center lines of Bailey street and Brookings street extended	7	1.50	0.60
E. J. Sharon and F. L. Blackman,	tract 1 of SW ¼, except the above described tract	7	21.00	8.40
A. Gustafson,	SW ¼ of NE ¼	18	36.00	72.00
A. Gustafson,	SE ¼ of NW ¼	18	40.00	80.00
Sioux Valley Granite Company,	that part of the NW ¼ of the NW ¼ east of the river, except block 89, Sioux Falls Imp. Co. addition	18	3.50	5.60
Sioux Valley Granite Company	that part of the NW ¼ of the NW ¼ west of the river, except tract 1 and block 91, Sioux Falls Imp. Co. addition	18	16.50	19.80
S. Widmark,	tract 1 of NW ¼	18	2.00	3.20
W. H. Lyon,	SW ¼ of NW ¼, except right-of-way of C., St. P. M. & O. Ry. Co	18	31.00	37.20
[fol. 70] W. H. Lyon,	NW ¼ of SW ¼, except right-of-way of C. St. P. M. & O. Ry. Co	18	27.00	25.00
S. A. Gehrig,	NE ¼ of SW ¼, except right-of-way of C. St. P. M. & O. Ry. Co	18	39.00	78.00
German State Bank of Dyerville, Ia.,	SW ¼ of SW ¼, and W ½ of SE ¼ of SE ¼, except right-of-way of C. St. P. M. & O. Ry. Co	18	54.50	96.00
G. J. Morris,	E ½ of SE ¼ of SW ¼ except right-of-way of St. P. M. & O. Ry. Co.	18	18.00	36.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
W. Braley,	that part of SE ¼ of SE ¼ north of right-of-way of C. St. P. M. & O. Ry. Co.	18	1.00	1.21
Clark Coats Estate,	NE ¼ of SW ¼, except right-of-way of C. R. I. & P. Ry. Co	22	8.00	11.20
Clark Coats Estate,	W ½ of SE ¼, except right-of-way of C. R. I. & P. Ry. Co.	22	25.00	35 20
Clark Coats Estate,	W ½, of NE ¼	27	11.00	14.00
Clark Coats Estate,	SE ¼ of NW ¼, except right-of-way of Great Northern Ry. Co.	27	5.00	6.00
Clark Coats Estate,	NE ¼ of SW ¼, except right-of-way of Great Northern Ry. Co.	27	6.00	7.20
S. Ella Chase, Henry Eyer Chase, Clara S. Chase, Annie G. Chase,	N ½ of S ½ of NW ¼ of SW ¼, except right-of-way of Great Northern Ry. Co.	27	0.50	0.60
Clarke G. Coats,	S ½ of S ½ of NW ¼ of SW ¼, except right-of-way of Great Northern Ry. Co	27	2.50	3.00
Charles Eckert,	S ½ of SW ¼, except right-of-way of Great Northern Ry. Co., and except blocks 1, 2, 3, and 4, Scott's Second Addition, and except blocks 9, 16 and 19, Edgewood Addition	27	32.00	50.40
Harry A. Chetham	NW ¼ of SW ¼	30	19.00	15.20
J. T. Norris,	SW ¼ of SW ¼	30	12.00	9.60
Stella I. Simpson,	W ½ of NW ¼	30	48.00	43.20
R. L. Dennis,	tract 2	31	1.50	0.80
R. L. Dennis,	tract 4	31	19.00	11.40
R. L. Dennis	tract 5	31	22.00	13.20
R. S. Dennis,	tract 6	31	1.50	0.80
R. L. Dennis,	tract 7	31	4.00	2.40
R. L. Dennis,	tract 13	31	11.00	6.60

Name of owner	Description	Sec.	Acres	Proportion of benefit
R. L. Dennis, tract 14		31	21.00	12.60
R. L. Dennis, tract 15		31	5.00	3.00
R. L. Dennis tract 16		31	9.00	5.40
R. S. Dennis, tract 17		31	3.00	1.80
Roger L. Dennis, tract 18		31	2.00	1.20
Roger L. Dennis, tract 19		31	6.00	3.60
Roger L. Dennis, tract 21		31	3.00	2.40
Roger L. Dennis, tract 22		31	1.00	0.80
Roger L. Dennis, tract 25		31	0.50	0.30
John Debok, W ½ of NW ¼		31	25.50	7.50
John Debok, NW ¼ of SW ¼		31	1.00	0.60
George Henderson, S ½ of SW ¼ of SW ¼		32	9.00	7.20
Frank Corey and F. A. Ayers, S ½ of SE ¼ of SW ¼		32	8.00	6.40
Joe Seuber[illegible], N. ½ of SE ¼ of SW ¼		32	1.00	0.80
William Jones, lots 1, 2, 3, and 4, of Hazelville, SE ¼		32	2.10	4.20
Pauline Zetlitz, lots 5, 6, 7 and 8 of Hazelville, SE ¼		32	2.50	5.00
Norman O. Hamline, lot 2 of NE ¼		32	6.00	6.00
Norman O. Hamline, lot 3 of NE ¼		32	2.50	2.50
J. Walkins and C. S. McDonald, lots 27 and 28 of Walkins & McDonald's plat of W ½ of NW ¼		33	16.50	16.50
Charles Eckert, E ½ of NW ¼ except right-of-way of Great Northern Ry. Co.		33	25.50	30.50
Julius Kuh, W ½ NE ¼ north of the river except right-of-way of Great Northern Ry. Co		33	26.00	32.00
G. B. Tuthill, NE ¼ South of the river		33	14.50	15.30
A. W. Tuthill, N ½ of NW ¼		34	22.00	22.40

Unplatted lands situated within the City of Sioux Falls, being in Township 101 North, Range 49 West.

Name of owner	Description	Sec.	Acres	Proportion of benefit
F. G. Carpenter,	N ½ of NE ¼	8	78.00	78.00
F. G. Carpenter,	SW ¼ of NE ¼, and NW ¼ of NW ¼ of SE ¼ of SE ¼, except blocks 5, 8, 12 and 21, Central Park addition	8	57.50	57.50
E. G. Carpenter,	NW ¼, except blocks 33, 40, 48 and 49 of Central Park addition	8	146.50	146.50
C. E. McKinney,	N ½ of SW ¼	8	38.00	38.00
E. B. Northrup,	SW ¼ of SW ¼	8	23.00	46.00
C. E. McKinney,	SE ¼ of SW ¼	8	33.00	66.00
Watertown and Sioux Falls Railway Co.,	that part of tract 3 of NW ¼ lying west of right-of-way of C. M. & St. P. Ry. Co.	9	13.00	13.00
State of South Dakota,	that part of tract 3 of NW ¼ lying east of right-of-way of C. M. & St. P. Ry. Co.	9	3.00	3.00
State of South Dakota,	tract 1 of NW ¼	9	2.80	2.80
Northern States Power Company,	tract 6 of NE ¼	16	2.68	2.68
Northern States Power Company,	tract 7 of NE ¼	16	2.50	2.50
Equitable Realty Company,	lot 1 of the Equitable Realty Co. Sub of the NE ¼ of NW ¼	16	4.50	4.50
Chicago, Milwaukee & St. Paul Ry. Co.	lot 2 of the Equitable Realty Co. Sub of the NE ¼ of NW ¼	16	2.60	2.60
W. F. Hesse,	lot 3 of the Equitable Realty Co. Sub of the NE ¼ of NW ¼	16	15.10	15.10
Northern States Power Company,	lot 4 of the Equitable Realty Co. Sub of the NE ¼ of NW ¼	16	2.06	2.06

Name of owner	Description	Sec.	Acres	Proportion of benefit
Larabee Mills Company,	lot 5 of the Equitable Realty Co. Sub of the NE ¼ of NW ¼	16	4.70	4.70
International Harvester Company,	lot 1 of tract 1 of NW ¼	16	0.74	3.70
Dakota Iron Store Company,	lots 2, 3, 4, 8 and 9 of tract 1 of the NW ¼	16	4.12	19.60
Equitable Realty Company,	lots 5 and 10 of tract 1 of the NW ¼	16	8.53	42.65
Chicago, Milwaukee & St. Paul Ry. Co.,	lots 6 and 7 of tract 1 of the NW ¼	16	3.80	19.00
Larabee Mills Company,	lot "A" of tract 2 of the NW ¼	16	0.28	1.40
Northern States Power Company,	lots "B" and "C" of tract 2 of the NW ¼	16	2.41	14.00
Chicago, Milwaukee & St. Paul Ry. Co.,	tracts 3 and 4 of NW ¼	16	1.78	9.40
Ed. Ellis,	tract 5 of the NW ¼	16	0.44	0.44
Chicago, Milwaukee & St. Paul Ry. Co.,	station grounds, being that part of SE ¼ of NW ¼ south and west of the right-of-way of the C. M. & St. P. Ry. Co.	16	1.48	7.40
Illinois Central Railroad Co.,	Station Grounds in the SE ¼ of NW ¼	16	2.64	13.40
Illinois Central Railroad Co.,	Station Grounds in the NE ¼ of SW ¼	16	4.23	33.38
Chicago Rock Island & Pacific Ry. Co.,	Station Grounds in the NE ¼ of SW ¼	16	1.00	8.00
Chicago Rock Island & Pacific Ry. Co.,	tracts 1 and 2 of SW ¼	16	0.35	2.10
Sioux Falls Gas Company,	tract 3 of SW ¼	16	0.50	3.00
J. M. Freese,	tract 4 of SW ¼	16	0.10	0.60
A. J. Jordan,	tract 5 of SW ¼	16	0.50	1.80
B. W. Harding,	tract 6 of SW ¼	16	0.20	1.20

Name of owner Description	Sec.	Acres	Proportion of benefit
[fol. 71] J. W. Tuthill Lumber Company, tract 7, north 50 feet of tract 9, tracts 12 and 13 of SW ¼	16	5.68	43.40
A. C. Schoeneman, tract 8 of SW ¼	16	2.85	21.10
J. C. Folger, tract 9 of SW ¼	16	1.40	12.40
Leora B. Francis, tract 10 of SW ¼	16	0.27	2.70
Henrietta Levinger, tract 11 of SW ¼	16	0.19	1.90
H. R. Dennis, east 132 feet of tract 14 of SW ¼	16	0.58	5.80
A. Larsen and G. E. Larsen, tract 14, except the above 132 feet	16	0.50	5.00
Northern States Power Company, tracts 15, 16 and 20 of SW ¼	16	1.93	17.88
Chicago, Rock Island & Pacific Railway, lots A and B of tract 17 of the SW ¼	16	0.39	3.90
S. H. Hurst and T. McKinnon, lot "C" of tract 17 of SW ¼	16	0.39	3.90
Tom McKinnon, lot "D" of tract 17 of SW ¼	16	0.47	4.70
S. H. Hurst, lot "E" of tract 17 of SW ¼	16	0.14	1.40
Guy Strahon, tract 21, except the west 30 feet of SW ¼	16	0.37	3.70
A. S. Held and J. Schetzel, west 30 feet of tract 21, of SW ¼	16	0.13	1.30
F. H. Hollister, tract 22 of SW ¼	16	0.25	2.50
Emerson-Brantingham Implement Co., tract 23 of SW ¼	16	0.22	2.20
Mary C. Brace, tract 24 of SW ¼	16	0.40	4.00
F. C. Whitehouse and George W. Egan, tract 25 of SW ¼	16	0.50	5.00
Chicago, Rock Island and Pacific Co., tract 29 of SW ¼	16	0.20	1.20
M. Margulies, tract 10 of SE ¼	16	0.50	3.00
Great Northern Railway Co., tract 11 of SE ¼	16	0.50	3.00
Girton Adams Ice Company, tract 12 of SE ¼	16	0.50	3.00

Name of owner Description	Sec.	Acres	Proportion of benefit
J. H. Drake, tract 1 of SE ¼	16	2.50	15.00
J. H. Donahoe, tracts 13 and 15 of SE ¼	16	0.80	4.80
J. H. Drake, a tract in the SE corner of Sec. 16, 500 feet north and south by 625 feet east and west	16	2.80	16.80
Catherine W. Peck and Porter P. Peck, tracts 1, 2 and 4 of NW ¼	17	105.45	210.90
City of Sioux Falls, tract 3 of NW ¼	17	2.00	4.00
Marie Winkler, tract 1 of SW ¼	17	5.50	6.80
Francis D. Hopkins, tract 2 of SW ¼	17	1.00	1.20
F. G. Carpenter, tract 3 of SW ¼	17	0.50	0.60
Security and Guaranty Company, NE ¼ of NE ¼, except the east half of block 3, Lincoln Park addition	18	32.00	64.00
Porter P. Peck, SE ¼ of NE ¼	18	34.00	68.00
Marcus A. —— —— ¼ of SE ¼, except the right-of-way of C. St. P. M. & O. Ry. Co., and blocks 12, 21, 22, 27 and 28, Englewood addition	18	20.00	40.00
C. C. Bratrud, N ½ of NE ¼	19	20.00	30.00
Dan Donahoe and W. M. Donahoe, E ½ of NW ¼, except West addition	19	22.50	33.80
Ludwig Seubert, SE ¼ of NE ¼ of NW ¼ of NW ¼	19	2.50	3.75
Jean Obert, NE ¼ of NE ¼ of NW ¼ of NW ¼	19	2.30	3.45
E. V. Rowley, W ½ of NE ¼ of NW ¼ of NW ¼	19	4.80	7.20
Dan A. Donahoe, NW ¼ of NW ¼ of NW ¼, and S ½ of NW ¼ of NW ¼, and SW ¼ of NW ¼	19	53.00	72.30
City of Sioux Falls, lot 1 of SW ¼	19	44.60	53.50
W. H. Thomas, George J. Fullerton and Leopold Guertin, lots 2 and 3 of SW ¼	19	5.50	6.60
Thomas Loughran and Louis Bauch, lot 4 of SW ¼	19	5.00	6.00

Name of owner	Description	Sec.	Acres	Proportion of benefit
Mary L. Guertin, N ½ of lots 5 and 6 of SW ¼		19	3.00	3.60
John H. Fernyhough, S ½ of lots 5 and 6 of SW ¼		19	4.00	4.80
Amelia Bauch, W ½ of SW ¼, except lots 1, 2, 3, 4, 5 and 6		19	23.00	30.00
Sioux Falls Gas Company, tract 3 of NE ¼		21	1.00	1.60
E. H. Hyde, tract 2 of NE ¼		21	1.50	2.20
Inez C. Van Eps, tract 1 of NW ¼		22	10.00	16.00
Joe Tosini, tract 2 of NW ¼		22	4.50	7.20
Girton-Adams Ice Company, tract 4 of NW ¼		22	1.20	1.90
Ed Bell, tract 1 of NE ¼		22	0.50	0.80

Platted Lots and Blocks

Berwick's Addition to Sioux Falls, Township 101, Range 49 Section 9

Name of owner	Description	Block	Proportion of benefit
Grant Lines, lots 7, 8, 9, 10, 11 and 12		1	1.60
Security Savings Bank, all of		2	3.20
F. C. Frizzle, lots 1, 2, 11 and 12		3	1.06
E. N. Frizzle, lots 3, 4, 5, 6, 9 and 10		3	1.59
Grant Lines, lots 7 and 8		3	0.53
A. D. Horton, all of		4	3.20
Edwin N. Potter, all of		5	3.20
Security Savings Bank, all of		6	1.72
F. L. Blackman, lots 1, 2, 7, 8, 11 and 12		7	1.59
City of Sioux Falls, lots 3, 4, 5, 6, 9 and 10		7	1.59
F. C. Frizzle, lots 1, 2, 3, 4, 9 and 10		8	1.59
City of Sioux Falls, lots 5, 6 and 12		8	0.80
J. N. Weston, lots 7 and 8		8	0.53
F. E. Payne, lot 11		8	0.26
Mathias Bloomer, lot 7		9	0.26
Security Savings Bank, except lot 7, all of		9	2.92
J. N. Weston, lots 1, 2, 10, 11 and 12		10	1.33
City of Sioux Falls, lots 3, 4, 5, 6, 7, 8 and 9		10	1.86

Name of owner	Description	Block	Proportion of benefit
State of South Dakota, all of		11	1 72
State of South Dakota, all of		12	3 20
State of South Dakota, lots 1, 2, 3, 4, 5 and 6		13	1 60
Edwin N. Potter, lots 7, 8, 9, 10, 11 and 12		13	1 60
State of South Dakota, all of		14	3 20
Security Savings Bank, all of		15	3 20
Grant Lines, lots 7, 8, 9, 10, 11 and 12		16	1 60
W. C. Archer, lots 11 and 12		17	0 53
Sophia Krull, lots 1, 2, 3, 10 and 11		18	1 32
C. L. Norton, lot 12		18	0 26
State of South Dakota, all of		19	3 20
State of South Dakota, all of		20	3 20
State of South Dakota, all of		21	3 20
State of South Dakota, all of		22	0 86
Security Savings Bank, lots 1, 2, 3 and 4		24	1 06
J. C. Boynton, lot 5		24	0 26
L. J. Modde, lot 6		24	0 26
M. W. Potter, lots 7 and 8		24	0 53
Edwin N. Potter, lots 9, 10, 11 and 12		24	1 06
E. B. Mallet, all of		25	2 34
State of South Dakota, all of		27	0 70
State of South Dakota, all of		28	2 34
State of South Dakota, all of		29	2 34
State of South Dakota, lots 6, 7 and 8		30	0 88
City of Sioux Falls, block "A"		A	10 20

Brookings and Edmunds' Addition to Sioux Falls, Section 16, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
W. H. Thomas, lots 10, 11 and 12		31	9 21
Parlin & Orendorf Plow Co., lot 13 and S ½ of lot 14		31	4 60
O. S. Jones Seed Company, N ½ of lot 14 and S ½ of lot 15		31	3 07
R. A. Wyman, N ½ of lot 15		31	1 53
Jewett Bros. & Jewett, lots 16, 17 and 18		31	9 21

[fol. 72] Burlington Subdivision of lots 10 to 13, block 26 of J. L. Phillips' Addition to Sioux Falls, Section 16, Township 101, Range 9

Name of owner	Description	Block	Proportion of benefit
A. H. Stites, lots 1, 2 and 3			5.50
Farley & Denton Company, lot 4			2.15
Brown Drug Company, lots 5, 6 and 7			6.45

Braley's Addition to Sioux Falls, Section 18, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
W. Braley, lots 1 to 4, and 9 to 17, inclusive		2	7.21
W. Braley, all of		3	11.65
W. Braley, lots 1 to 6, and 11 to 20, inclusive		4	9.03
C. R. Lewis, lots 7, 8, 9 and 10		4	2.17
W. Braley, all of block		5	11.78
George F. Boyle, south 88 feet of lot 4		6	0.82
W. Braley, except south 88 feet of lot 4, all of		6	7.78
W. Braley, all of		7	8.60
W. Braley, all of		8	12.70
Lois W. Jellies, lot 1		9	2.62
W. Braley, lots 2, 3, 4, 5 and 6		9	13.17
W. Braley, all of		10	12.18
W. Braley, all of		11	12.18
W. Braley, all of		12	8.12
W. Braley, lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 16 to 30, inclusive		13	14.25
Anna Vaughn, lot 5		13	0.55
W. Braley, lots 1 to 5, and 21 to 30, inclusive		14	8.24
Gertrude Grinde, lot 6		14	0.54
W. Braley, lots 28, 29 and 30		15	1.65

Bunker's Addition to Sioux Falls, Section 8, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Hans Ruvald, lots 1 to 7, lot 11, and lots 13 to 20, inclusive		2	3.15
C. C. Caldwell, lot 12		2	0.21

Central Park Addition to Sioux Falls, Section 8, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Charles Dailey,	lots 1 and 2	1	0.40
Hans Ruvald,	lots 3 and 4	1	0.40
J. H. Fernyhough,	lot 5	1	0.20
F. T. Williams,	lot 6	1	0.20
Bessie Haas,	lots 7 and 8	1	0.40
J. H. Fernyhough,	lots 9, 10, 14, 15 and 16	1	1.00
Benjamin F. Barnes,	lots 11, 12 and 13	1	0.60
John P. Shoemaker,	all of	2	3.20
Frances G. Carpenter,	all of	3	3.20
Henry D. Norris,	all of	4	3.20
Diantha A. Hurd,	all of	5	3.20
Diantha A. Hurd,	all of	12	3.20
Henrietta Levinger,	all of	8	3.20
Marietta Blomiley,	all of	13	3.20
Frances G. Carpenter,	all of	14	3.20
Clara L. Hambright,	lots 1, 2, 3, 4, 13, 14, 15 and 16	15	1.60
Abe Davidson and Sippe Davidson,	lots 5, 6, 7 and 8	15	0.80
Michael Marousak,	lots 9, 10, 11 and 12	15	0.80
Frances G. Carpenter,	all of	16	3.20
Frances G. Carpenter,	all of	17	3.20
Anne E. Ploog,	all of	18	3.20
Frances G. Carpenter,	all of	19	3.20
Frances G. Carpenter and G. T. Greeley,	lots 1 to 4, and 9 to 16, inclusive	20	2.40
Nora Connell,	lots 5, 6, 7 and 8	20	0.80
W. R. Timpe and H. L. Schroeder,	lots 1, 2, 3, 14, 15 and 16	21	1.20
F. L. Blackman,	lots 4, 9, 10, 11 and 12	21	1.00
Mattie M. Hanson,	lots 5, 6, 7 and 8	21	0.80
D. J. Carpenter,	lot 13	21	0.20
Mary C. Brace,	all of	30	3.20
F. L. Blackman,	all of	31	3.20
Frances G. Carpenter,	lots 1 to 14, inclusive	32	2.80
Mary Sanders and May B. Sanders,	lots 15 and 16	32	0.40

Name of owner	Description	Block	Proportion of benefit
Earl H. Roster, all of		33	3.20
Frances G. Carpenter, all of		40	3.20
Frances G. Carpenter, all of		48	3.20
George H. Brace, all of		49	3.20

Daniel's Addition to Sioux Falls, Section 22, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Austin L. Smith, all of		8	4.80
Chicago, Milwaukee & St. Paul Railway Co., all of		9	1.92
Kittery Realty Company, all of		10	2.70
Kittery Realty Company, all of		11	1.28
Girton-Adams Ice Co., all of		12	1.60
Girton-Adams Ice Co., all of		13	1.92

Englewood Addition to Sioux Falls, Section 18, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Marcus A. Russel, all of		1	3.84
William Fuller, all of		2	3.84
Marcus A. Russel, all of		3	3.84
Annie A. W. Nock, all of		4	3.84
James B. Adams, all of		12	3.84
Marcus A. Russel, all of		13	3.84
Mark M. Powers, all of		14	3.84
Marcus A. Russel, all of		15	3.84
Marcus A. Russel, all of		16	3.84
Marcus A. Russel, all of		17	3.84
James B. Adams, all of		18	3.84
F. I. Russel, lots 1 and 2		19	0.48
M. T. Botsford, lots 3 and 4		19	0.48
Addie B. Woodworth, lots 5, 6, 7 and 8		19	0.96
Marcus Russel, lots 9, 10 and 11		19	0.76
Sarah Walker, lot 12		19	0.24
Alice Steinback, lot 13		19	0.24
Lillie M. Darrow, lot- 14, 15 and 16		19	0.72

Name of owner	Description	Block	Proportion of benefit
F. L. Blackman, lots 1, 2, 3 and 4		20	0.96
F. I. Russel, lot 5		20	0.24
Marcus Russel, lot 6		20	0.24
F. I. Russel, lots 7 and 8		20	0.48
Marcus Russel, lots 9 to 16 inclusive		20	1.92
F. I. Russel, lot 1		21	0.24
S. D. Kennedy, lots 2, 3, 4, 5 and 6		21	0.96
F. I. Russel, lot 6		21	0.24
M. J. Tinkham, lots 7 and 8		21	0.48
F. I. Russel, lots 9 to 16 inclusive		21	1.92
Marcus Russel, all of		22	3.84
Marcus Russel, all of		27	3.84
Marcus Russel, all of		28	3.84
Marcus Russel, all of		29	3.84
Ed. A. Benson and Chas. E. Anderson, all of		30	3.84
Marcus Russel, all of		31	3.84
Marcus Russel, lots 1, 2, 3 and 4		32	0.96
F. I. Russel, lots 5 and 6		32	0.48
James Martin, lots 7 and 8		32	0.48
E. T. Newhall, lots 9, 10 and 11		—	0.72
[fol. 73] Joe Kirby, lot 12		32	0.24
Markus A. Russel, lots 13, 14, 15 and 16		32	0.96

Lake Side Addition to Sioux Falls, Section 17, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
City of Sioux Falls, all of		1	2.16
J. W. Parker, lot 14		2	0.36
Sophia M. Breckenridge, lot 15		2	0.36
Security and Guaranty Co., lots 16, 17 and 18		2	1.08
Porter P. Peck, all of		5	3.60

Lake View Addition to Sioux Falls, Section 8, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Mary S. Keith, lots 5, 6, 7 and 8		3	0.80

Lincoln Park Addition to Sioux Falls, Section 18, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Porter P. Peck, lot 6		3	0.32

Meredith's First Addition to Sioux Falls, Section 7, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
F. L. Blackman, lots 1, 2, 3, 4, 10, 11 and 12		1	2.31
Emma J. Smith, lots 1, 2, 3, 4, 8, 9, 10, 11 and 12		2	3.07
W. H. Lyon, all of		3	4.00
Herbert C. Everson and Hattie Everson, all of		4	4.00
William Grotewold, lots 11 and 12		5	0.66
Marian Chase, lots 6 and 7		24	0.66
Thos. Scanlon, all of		25	6.40
Thos. Scanlon, lots 1 to 6, inclusive		26	3.20
Thos. Scanlon, all of		32	6.40

Meredith's Second Addition to Sioux Falls, Section 7, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
E. J. Sharon, all of		33	4.00
E. J. Sharon, all of		34	3.00
Horatio A. Burtch, all of		37	2.00
A. G. Erskine, all of		38	3.90
A. G. Erskine, all of		39	4.00
John E. Patheal, lots 1, 2, 3, 4, 7, 8, 9, 10, 11 and 12		40	3.00
F. L. Blackman and E. J. Sharon, all of		45	2.00
F. L. Blackman and E. J. Sharon, lots 11 and 12		47	0.66
F. L. Blackman and E. J. Sharon, all of		46	2.00
F. L. Blackman and E. J. Sharon, all of		58	2.50
Carrie Lundell, lots 11 and 12		60	0.66
I. E. Kosier, all of		59	1.00
Carrie Lundell, all of		74	3.60
E. R. Loucks, lots 1 and 2		75	0.66
I. E. Kosier, lots 7, 8, 9, 10, 11 and 12		75	2.00

Millard Park Addition to Sioux Falls, Section 17, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Porter P. Peck, lots 10, 11 and 12		34	0.78
Porter P. Peck, all of		1	1.76

Morse's Addition to Sioux Falls, Section 21, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Stephen Donahoe, Den Donahoe, Dan Donahoe and Wm. Donahoe, lots 2, 3, 4, 9, 10 and 11		1	4.25

Millspaugh's Addition to Sioux Falls, Section 21, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Girton-Adams Ice Company, lots 1, 2, 3, 4 and 5, 13, 14, 15 and 16		14	6.70
P. O. Stiver, lots 6, 7, 8, 9, 10, 11 and 12		14	5.90
P. O. Stiver, lots 1, 2, 8, 9, 10 and 11		15	5.10
Girton-Adams Ice Company, lots 3, 4, 5, 6, 7, 12, 13, 14 and 15		15	6.40
Chicago, Milwaukee & St. Paul Ry. Co., lots 16 and 17		15	1.70
P. O. Stiver, lots 1, 2 and 3		16	2.00
J. L. Brookings, lots 14		16	0.60
P. O. Stiver, lots 11, 12, 13 and 14		27	3.40
Girton-Adams Ice Company, lots 10, 11 and 12		28	1.75
Chicago, Milwaukee & St. Paul Ry. Co., lots 13, 14 and 15		28	2.50
P. O. Stiver, lots 16, 17 and 18		28	2.50

North Park Addition to Sioux Falls, Section 8, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Hans Ruvald, lots 1, 2, 3 and 4		2	0.80
John Kadinger, lots 9, 10, 11 and 12		2	0.80

Name of owner	Description	Block	Proportion of benefit
Hans Ruvald, lots 13, 14, 15 and 16		2	0.80
Hans Ruvald, all of		3	3.20
Hans Ruvald, all of		4	3.20
Emma J. Nelson, all of		5	3.20
Hans Ruvald, except lot 6, all of		6	3.00
Hans Ruvald, lots 6, 7 and 8		11	0.60
P. P. Simon, lots 1 and 2		12	0.42
Hans Ruvald, lots 3, 4, 5, 6, 7 and 8		12	1.25
John Frederickson, Peter Helland and Hans Ruvald, lot 6		6	0.20

North Boulevard Addition to Sioux Falls, Township 101, Range 49, Section 5

Name of owner	Description	Block	Proportion of benefit
Mary C. Brace, all of		6	1.60
Mary C. Brace, all of		9	1.60
Mary C. Brace, all of		13	1.60
Mary C. Brace, all of		29	1.60
Mary C. Brace, all of		49	1.60
Mary C. Brace, all of		50	1.60
Mary C. Brace, all of		61	1.60
George H. Brace, all of		4	1.60
George H. Brace, all of		34	1.60
Chas. Brigham, John C. Spafford and George H. Brace, all of		35	1.60

North Park 2nd Addition to Sioux Falls, Section 8, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Julia W. Anderson, lots 11 to 16, inclusive		1	1.20
Hans Ruvald, all of		2	3.20
Hans Ruvald, all of		3	5.14
Ira Cox, all of		4	3.20
Hans Ruvald, all of		5	3.20
Hans Ruvald, all of		6	3.20
Tharon S. Swain and Henry E. Shaw, all of		7	3.20
Hans Ruvald, all of		8	3.20

Name of owner	Description	Block	Proportion of benefit
Hans Ruvald, all of		9	3.20
Hans Ruvald, all of		10	3.20
Ira Cox, all of		11	3.20
Hans Ruvald, lots 17 and 18		12	0.40
Julia W. Anderson, except lots 17 and 18, all of		12	4.74
Hans Ruvald, lots 1, 2, 9, 10, 11, 12, 13, 14, 15 and 16		13	2.00
Hans Ruvald, lots 1, 2, 3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24		15	3.94
G. J. Fullerton, lots 1 and 2		16	0.40
S. Olney, lots 3, 4 and 5		16	0.60
Hans Ruvald, lots 6, 7, 8, 10, 11, 12 and 13		16	1.40
Ed. H. Storey, lot 9		16	0.20
W. H. Ormiston, lot 14		16	0.20
Hans Ruvald, lots 15 and 16		16	0.40
[fol. 74] Hans Ruvald, all of		17	3.20
Hans Ruvald, except lot 7, all of		18	3.00
S. E. White, lot 7		18	0.20
Hans Ruvald, all of		19	3.20
Hans Ruvald, all of		20	3.20
Hans Ruvald, all of		21	3.20
Hans Ruvald, all of		22	3.20
Hans Ruvald, lots 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15 and 16		23	2.40
Vigant Ludwig, lot 20		24	0.20

Harrison's Addition to Sioux Falls, Section 18, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
William Jenkins, lots 5, 6, 7 and 8		6	1.72
Cora Sharon, al- of		11	5.12
Williams Jenkins, lots 7, 8 and 9		12	1.29
Oscar C. Potter, lots 5 and 6		14	0.86
Board of Education, lots 1 to 10, inclusive		15	4.26
A. P. Burtch, all of		16	5.12
Porter P. Peck, all of		17	5.12
Porter P. Peck, all of		18	5.12
Oscar C. Potter, all of		19	5.12
Lester D. Sharon, all of		20	5.12
G. H. Grebel, all of		21	5.12
G. H. Grebel, all of		22	5.12

Name of owner	Description	Block	Proportion of benefit
W. L. Oakes, all of		25	5.12
G. H. Grebel, all of		26	5.12
G. H. Grebel, all of		27	5.12
G. H. Grebel, all of		28	5.12
G. H. Grebel, all of		29	5.12
Oscar C. Potter, all of		30	5.12
Porter P. Peck, all of		31	5.12
Porter P. Peck, all of		32	5.12

J. L. Phillips' Sioux Falls (Original) and J. L. Phillips' Addition to Sioux Falls, Section 16, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
V. Anderson and A. Anderson, lots 18		13	3.98
R. R. Plane, lot 10		13	3.98
L. Coplow, lot 11 and S ½ of lot 12		13	5.97
W. I. Thompson, N ½ of lot 12 and S. 17 feet of lot 13		13	2.65
—J. Solari and S. J. Solari, N 33 feet of lot 13 and lot 14		13	5.30
Patrick Shannon, S ½ of lot 15		13	1.99
A. M. Whitman, N ½ of lot 16		13	1.99
George W. Egan, S ½ of lot 16		13	1.99
C. O. Bailey, N ½ of lot 16		13	1.99
Albert Anderson, lot 17		13	3.98
C. Look and W. H. Look, lot 10 and S ½ of lot 11		14	6.21
John Tosini, N ½ of lot 11		14	2.07
William Reynolds, lot 12		14	4.14
John McKeen, lot 13 and S ½ of lot 14		14	6.21
G. H. Perry Estate, lot 15 and N ½ of lot 14		14	6.21
C. S. Lund, lot 16		14	4.14
G. L. Nadel and Wm. Tate, lot 17		14	4.14
Beach Parshal Realty Co., lot 18		14	4.14
Koenig Realty Co., lots 10, 11 and 12		15	12.42
Josephine Levinger, S ½ of lot 13		15	2.07
G. T. Greeley, N ½ of lot 13		15	2.07
E. J. Daniels, lot 14		15	4.14
C. C. Bratrud, lot 15		15	4.14

Name of owner	Description	Block	Proportion of benefit
F. Hyde, S ½ of lot 16		15	2.07
G. T. Greeley, N ½ of lot 16		15	2.07
Inez C. Van Eps, lots 17 and 18		15	8.28
F. S. Emerson Estate, lot 1		21	4.60
C. E. Kaufmann, N ½ of lot 2		21	2.30
G. T. Greeley, S ½ of lot 2		21	2.30
E. L. Smith, lots 3 and 4		21	9.20
E. B. Northrup, lot 5		21	4.60
W. A. Beach, N ½ of lot 6		21	2.30
A. K. Pay, S ½ of lot 6, and lot 7		21	6.90
G. T. Greeley, lot 8		21	4.60
William Carswell, N ½ of lot 9		21	2.30
S. K. Grigsby, S ½ of lot 9		21	2.30
W. Braley and G. T. Blackman, W 100 feet of lots 10 and 11		21	5.52
J. W. Jones, E 50 feet of lots 10 and 11		21	2.75
J. W. Jones, lot 12		21	4.14
L. A. Kelly, lots 13 and 14		21	8.28
E. L. Smith, lot 15 and S ½ of lot 16		21	6.21
H. A. Homan, N ½ of lot 16 and lot 17		21	6.21
— C. Smith, lot 9		22	4.83
C. Kirakedes, lot 1		22	4.83
Inez C. Van Eps, lot 2		22	4.83
Lacotah Building Company, lot 3 and N ½ of lot 4		22	7.24
F. Angel, S ½ of lot 4		22	2.41
Inez C. Van Eps, lot 5		22	4.83
Mary Zempel, lot 6		22	4.83
E. B. Northrup, lot 7		22	4.83
R. F. Pettigrew, lot 8		22	4.83
W. K. Van Brunt, lots 1 and 2, and N ½ of lot 3		23	10.72
Van Brunt-Overland Co., S ½ of lot 3 and N ½ of lot 4		23	4.29
George H. Brace, S ½ of lot 4, and lots 5 and 6		23	10.72
J. M. Weston, lot 7		23	4.29
German Savings Bank, lot 8		23	4.29
Joseph Tosini, N ½ of lot 9		23	2.15
R. L. Look, S ½ of lot 9		23	2.15
George B. Cone, lots 1 and 2		24	8.28
F. M. Mills, lot 3		24	4.14
W. I. Thompson and J. W. Wadden, lot 4		24	4.14

Name of owner	Description	Block	Proportion of benefit
Madison M-ll Co., lot 5		24	4.14
W. I. Thompson, lot 6		24	4.14
Rock Island Plow Co., lot 7 and N ½ of lot 8		24	6.21
Luella A. Jones, lot 9 and S ½ of lot 8		24	6.21
Chicago, Milwaukee & St. Paul Ry. Co., lots 10 to 18, inclusive		24	37.26
Manchaster Biscuit Company, lots 1, 2, 3 and 4		25	17.16
Chicago, Milwaukee & St. Paul Ry. Co., lots 5, 6, 7, 8 and 9		25	21.45
J. P. Edmison and E. L. Smith, lots 4, 5 and 6		26	10.35
Chicago, Rock Island & Pacific Ry. Co., west 44 feet of lots 7, 8 and 9		26	3.64
H. T. Pramley, east 42 feet of west 86 feet of lots 7, 8 and 9		26	3.43
Pete Ellingson and John Ellingson, east 42 feet of west 128 feet of lots 7, 8 and 9		26	3.43
Pete Ellingson, east 22 feet of lots 7, 8 and 9		26	1.82

Sioux Falls Improvement Company's Addition to Sioux Falls, Section 18, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
S. E. Reinius, all of		89	2.50
Sioux Valley Granite Company, lots 1, 2, 3, and 4		91	0.66
Sara Foster, lots 12, 13 and 14		91	0.54
J. Reichard and J. W. Reichard, lots 15 and 16		91	0.36
Moses Hawkins, lot 17		91	0.18
James W. Bowles, lot 18		91	0.18

Silver Park Addition to Sioux Falls, Section 24, Township 101, Range 50

Name of owner	Description	Block	Proportion of benefit
Great Northern Investment Co., blocks 1, 2 3 and 4		..	11.60
[fol. 75] Great Western Investment Co. blocks 13, 14, 15, 16, 17, 18, 19, 20, 29, 30, 31, 32, 33, 34, 35, 47, 48, 49, 50, 63 and 64		..	63.60

Van Eps' Addition to Sioux Falls, Section 22, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Joe Tosini, all of		1	2.00
Joe Tosini, all of		2	5.12
Jose Tosini, lot 1		3	0.43
Inez C. Van Eps, lots 1 to 6, and 9 to 12, inclusive		3	4.27
Inez C. Van Eps, lots 1, 2, 3, 4 and 5	24 2nd Add.		3.00
William Lackey, lot 6	24 2nd Add.		0.70
Inez C. Van Eps, lots 1, 2, 3, 4 and 5	18 2nd Add.		2.50
Inez C. Van Eps, lot 1	27 2nd Add.		0.32
Inez C. Van Eps, lots 1, 2 and 3	19 2nd Add.		1.50
Inez C. Van Eps, lots 5 to 13, inclusive	30 2nd Add.		3.20
Inez C. Van Eps, lots 1, 2 and 3	31 2nd Add.		1.20
Inez C. Van Eps, all of	33 2nd Add.		3.30

West Lawn Addition to Sioux Falls, Section 19, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Dan Donahoe and Wm. Donahoe, blocks 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20 and 21		..	84.80
Clara L. Hambright all of		13	4.80

West Park Addition to Sioux Falls, Section 17, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
David R. Rector, lots 1 and 2		1	0.72
John P. Hoffman, lot 3		1	0.36
Sioux Falls Trust Company, lots 18, 19 and 20		1	1.08
Sioux Falls Trust Company, lots 1, 2, 3, 19 and 20		2	1.80
Board of Education, lot 18		2	0.36

Glendale Addition to Sioux Falls, Section 33, Township 101, Range 49

Name of owner	Description	Block	Proportion of benefit
Julius Kuh, blocks 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18			41 20

Town of Renner, Section 9, Township 102, Range 49

Name of owner	Description	Block	Proportion of benefit
Leonard Renner, lots 1 to 8, inclusive		1	2 40

Olson's Addition to Renner.

Name of owner	Description	Block	Proportion of benefit
Jonas Olsen, lots 5 to 13, inclusive		1	3 06
H. W. Ross Lumber Co., lots 2, 3 and 4		1	0 72
Jonas Olsen, lots 5 to 13, inclusive		1	3 06
H. W. Ross Lumber Company, lots 14 to 19, inclusive		1	2 34
Jonas Olsen, lots 20 to 24, inclusive		1	1 70

Benefits to Roads, Railroads, Etc.

Chicago, Rock Island & Pacific Railway Co., benefits to right-of-way, tracks, embankments and bridges across sections 16, 21, and 22, township 101, range 49, west of the 5th P. M., within the drainage area	839 45
Chicago, St. Paul, Minneapolis & Omaha Railway Co., benefits to right-of-way, tracks, embankments and bridges across sections 16 and 18, township 101, range 49, west of the 5th P. M., and across section 13, township 101, range 50, west of the 5th P. M., within the drainage area	839 45
Great Northern Railway Co., benefits of right-of-way, tracks embankments and bridges across sections 27, 16 and 31, township 101, range 49, west of the 5th P. M., within the drainage area	613 85

	Proportion of benefit
Watertown & Sioux Falls Railway Co., benefits to right-of-way, tracks, embankments and bridges across sections 4, 5 and 9, Township 101, range 49, west of the 5th P. M., and across sections 29 and 32, township 102, range 49, west of the 5th P. M., within the drainage area	750 26
Chicago, Milwaukee & St. Paul Railway Co., benefits to right-of-way, tracks, embankments and bridges across sections 4, 9, 16, 21 and 22, township 101, range 49, west of the 5th P. M., and across sections 4, 9, 16, 21 and 28 and 33, township 102, range 49, west of the 5th P. M., and across sections 5, 8, 17, 20, 28, 29, and 33, township 104, range 49, west of the 5th P. M., and across section 32, township 104, range 49, west of the 5th P. M., within the drainage area	1,678 90
City of Sioux Falls, benefits to water supply, highways and dedicated streets within the drainage area	3,147 95
Sioux Falls Township, benefits to 3.48 miles of laid out and established highways within the drainage area	171 76
Mapleton Township, benefits to 11.95 miles of laid out and established highways within the drainage area	589 85
Sverdrup Township, benefits to 15.00 miles of laid out and established highways within the drainage area	760 09
Dell Rapids Township, benefits to 1.06 miles of laid out and established highway within the drainage area	52 32
Minnehaha County, benefits to 7 67 miles of laid out and established highways and to bridges within the drainage area	2,518 36
Northern States Power Company, benefits to Hydro Electric plant situated in lot 4, of Equitable Realty Co., sub-division of SE ¼ of NW ¼ of Section 16, Township 101, Range 49 West of the 5th P. M., and in tracts Nos. 6 and 7 of the NE ¼ of Section 16, Township	

101, Range 49 West of the 5th P. M., and benefits to water rights across sections 16, 21, 22, 27, 34, 33, 32, 31, 30, 19, 18, 7, 6, and 5, Township 101, Range 49, West of the 5th P. M., and across Sections 25, and 24, Township 101, Range 50 West of the 5th P. M., and across Sections 32, 29, 20, 17, 18, 8 and 5, Township 102, Range 49 West of the 5th P. M., and across Sections 32, 29, 20 and 17 Township 103, Range 49, West of the 5th P. M..... 5,351 63

All such owners and all persons interested are hereby notified and summoned to show cause at the time and place aforesaid why the proportion of benefits shall not be fixed as stated, and the said determination of said board made final.

Dated June 10, 1921.

A. G. Risty,
Chairman of the Board of County Commissioners of Minnehaha County, South Dakota.

Attest:

F. E. Ward, County Auditor. (Seal.)

[fol. 76] "Exhibit D" to Bill of Complaint

(Decree, March 2, 1922.)

In the District Court of the United States, for the District of South Dakota, Southern Division.

No. 99. In Equity.

Chicago, Milwaukee & St. Paul Railway Company,
Plaintiff,

vs.

A. G. Risty, J. A. Jensen, C. W. Knodt, Chris Olson, G. W. Tyler, and C. T. Charnock, as County Commissioners of Minnehaha County, South Dakota, Fred E. Ward, as Auditor of Minnehaha County, South Dakota, and J. O.

Anderson, as Treasurer of Minnehaha County, South Dakota, Defendants, and Minnehaha National Bank of Sioux Falls, South Dakota, Sioux Falls National Bank of Sioux Falls, South Dakota, Security National Bank of Sioux Falls, South Dakota, First National Bank of Dell Rapids, South Dakota, First National Bank of Garretson, South Dakota, Savings Bank of Colton, South Dakota, Brandon Savings Bank of Brandon, South Dakota, Minnehaha County Bank of Valley Springs, South Dakota, The Rowena State Bank of Rowena, South Dakota, Farmers Bank of Humboldt, South Dakota, Dakota Trust & Savings Bank of Sioux Falls, South Dakota, Security Savings Bank of Sioux Falls, South Dakota, Commercial and Savings Bank of Sioux Falls, South Dakota, Minnehaha State Bank of Garretson, South Dakota, Sioux Falls Savings Bank of Sioux Falls, South Dakota, H. E. Donahoe, and W. G. Porter, Intervening Defendants.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was Ordered, Adjudged, and Decreed as follows, [fol. 77] viz: that the defendants, A. G. Risty, J. A. Jensen, C. W. Knodt, Chris Olson, G. W. Tyler, and C. T. Charnock, as County Commissioners of the County of Minnehaha, and State of South Dakota, their agents, servants, employes, attorneys, and successors in office, and each and every of them, be and they are hereby forever restrained and enjoined from making any apportionment of benefits upon the plaintiff herein, the Chicago, Milwaukee & St. Paul Railway Company, or upon any propery belonging to the plaintiff (other than such property of the plaintiff as may have heretofore been assessed for the original construction of Drainage Ditch No. 1 or of Drainage Ditch No. 2, of Minnehaha County, South Dakota) for the construction of a spillway, dams, retaining gates, ditches, and for all other work done or that may hereafter be done by or under the supervision of the Board of County Commissioners of the County of Minnehaha South Dakota in the matter of the construction, or re-construction, repair, or maintenance of Drainage Ditch No. 1, and Drainage Ditch No. 2, or of said ditches under the designation of "Drainage Ditch No. 1 and No. 2" as "Drainage Ditch No.

1 and 2," of Minnehaha County, South Dakota, and that they and each of them are hereby perpetually restrained and enjoined from making any assessments on said property, or upon any parcel or portion thereof for the cost of the construction, reconstruction, repair or maintenance of the said spillway, dams, retaining gates, ditches and other work heretofore done, or which may be hereafter done upon the said drainage ditches above referred, to, or any of them, and from in any manner including any of the property of the plaintiff, the Chicago, Milwaukee & St. Paul [fol. 78] Railway Company (other than the property originally assessed for the construction of Drainage Ditch No. 1 or of Drainage Ditch No. 2) within the territory benefited by said drainage ditches, or either of them.

It is further ordered, adjudged and decreed that the defendant, Fred E. Ward as Auditor of the said County of Minnehaha, South Dakota, his agents, servants, employees, attorneys and successors in office, and each and every of them, be and are hereby forever restrained and enjoined from making any such apportionment of benefits, or from making, or levying any such assessment upon the plaintiff, the Chicago, Milwaukee and St. Paul Railway Company, or upon any of the property (other than that originally asessed for the construction of said Drainage Ditch No. 1 and said Drainage Ditch No. 2) and from certifying any such assessment to the County Treasurer of the said County of Minnehaha, South Dakota.

It is further ordered, adjudged and decreed that the defendant J. O. Anderson, as Treasurer of the County of Minnehaha, South Dakota, his agents, servants, employees, attorneys, and successors in office, and each and every of them, are hereby forever restrained and enjoined from filing any such assessment and from collecting any such assessment against the property of the plaintiff, the Chicago, Milwaukee & St. Paul Railway Company (other than the property heretofore assessed for the original construction of the said Drainage Ditch No. 1 or of said Drainage Ditch No. 2).

It is further ordered, adjudged and decreed that this [fol. 79] decree be and is hereby declared to be without prejudice to any of the rights of the plaintiff, the Chicago, Milwaukee & St. Paul Railway Company, to object to any apportionment of benefits for the construction of said spill-

way, dams, retaining gates, ditches and other work heretofore done, or that may hereafter be done by the Board of County Commissioners of Minnehaha County, South Dakota, in the matter of the construction, or re-construction, repair, or maintenance of Drainage Ditch No. 1 or of Drainage Ditch No. 2, or of the Drainage Ditches No. 1 and No. 2, or of Drainage Ditch No. 1 and 2 of Minnehaha County, South Dakota, upon any of the property of the plaintiff which may heretofore have been assessed for the original construction of said Drainage Ditch No. 1 or of said Drainage Ditch No. 2, and without prejudice to any and all rights of the plaintiff to contest any such apportionment of benefits, or any assessment which may be made under any such apportionment of benefits, or any act of the Board of County Commissioners of said County of Minnehaha in the construction of said spillway, dams, retaining gates, ditches and other work heretofore done, or which may be hereafter done by or under the supervision of the Board of County Commissioners of said Minnehaha County, South Dakota, in the matter of the construction or re-construction, repair, or maintenance of said Drainage Ditch No. 1, or of said Drainage Ditch No. 2, or of said Drainage Ditches No. 1 and No. 2 or of said Drainage Ditch No. 1 and 2, and, that so far as this decree is concerned, the rights of the plaintiff, the Chicago, Milwaukee [fol. 80] & St. Paul Railway Company with respect to the making of any apportionment of benefits, or the levying of any assessment against any of its property heretofore assessed for the original construction of said Drainage Ditch No. 1, or of said Drainage Ditch No. 2, are expressly saved and reserved and shall remain the same as if this suit had not been instituted or this decree entered herein.

It is further ordered, adjudged and decreed that the plaintiff herein, the Chicago, Milwaukee & St. Paul Railway Company, have and recover against the defendants herein, A. G. Risty, J. A. Jensen, C. W. Knodt, Chris Olson, G. F. Tyler and C. T. Charnock, as County Commismissioners of Minnehaha County, South Dakota, Fred E. Ward, as Auditor of Minnehaha County, South Dakota, and J. O. Anderson, as Treasurer of Minnehaha County, South Dakota, and against the intervening defendants herein, Minnehaha National Bank of Sioux Falls, South Dakota, Sioux Falls National Bank of Sioux Falls, South

Dakota, Security National Bank of Sioux Falls, South Dakota, First National Bank of Dell Rapids, South Dakota, First National Bank of Garretson, South Dakota, Savings Bank of Colton, South Dakota, Brandon Savings Bank of Brandon, South Dakota, Minnehaha County Bank of Valley Springs, South Dakota, The Rowena State Bank of Rowena, South Dakota, Farmers Bank of Humboldt, South Dakota, Dakota Trust and Savings Bank of Sioux Falls, South Dakota, Security Savings Bank of Sioux Falls, South Dakota, Commercial and Savings Bank of Sioux Falls, South Dakota, Minnehaha State Bank of Garretson, South Dakota, Sioux Falls Savings Bank of Sioux Falls, South Dakota, H. E. Donahoe and W. G. Porter, its costs and disbursements herein taxed and allowed in the sum [fol. 81] of — Dollars (the amount thereof to be inserted herein by the Clerk of the Court after the costs shall have been taxed by him).

Done in open Court, at Sioux Falls, in said Southern Division of the District of South Dakota, on the 2nd day of March, 1922.

By the Court:

Jas. D. Elliott, Judge.

Attest: Jerry Carleton, Clerk. (Seal of Court.)

[fol. 82] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR INTERLOCUTORY INJUNCTION—Filed June 23, 1927

Now come the above named plaintiffs and move the Court for an interlocutory injunction herein restraining the defendants herein, their deputies, agents, servants, and employees, and each and every of them, from proceeding further in the making of an apportionment of benefits upon the property of the Chicago, Milwaukee & St. Paul Railway Company now held by plaintiffs as a portion of their receivership estate, for the construction of a spillway, dams, retaining gates, ditches, or other work in the assessment area of Drainage Ditch No. 1 and of Drainage Ditch No. 2

of Minnehaha County, South Dakota, and from making any assessment upon the property of the Chicago, Milwaukee & St. Paul Railway Company for the cost of the construction of said spillway, dams, retaining gates, ditches or other work, or any part thereof, and from doing any act looking towards an apportionment of benefits against the property of the Chicago, Milwaukee & St. Paul Railway Company, or against the property held by plantiffs as a [fol. 83] part of their receivership estate, for any work heretofore done in the area of Drainage Ditch No. 1 and Drainage Ditch No. 2 of Minnehaha county, South Dakota, or of Drainage Ditch No- 1 & 2 of said Minnehaha county, and from doing any act tending towards the making of any assessment for the cost of any such work heretofore done in the area of said Drainage Ditch No. 1, said Drainage Ditch No. 2, or said Drainage Ditch No-. 1 & 2, and ejoining and restraining the defendant, Dale E. Howe, as Auditor of the said county of Minnehaha, his deputies and assistants, and his successors in office, from making any apportionment of benefits for work done, as aforesaid in the area of Drainage Ditch No. 1, Drainage Ditch No. 2, or Drainage Ditch No-. 1 & 2, or from making or filing any assessment therefor upon the property of the Chicago, Miiwaukee & St. Paul Railway Company or upon the property held by plaintiffs as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, and from certifying any assessment therefor to the County Treasurer of the said County of Minnehaha; and that the defendants, A. G. Risty, Chris Olson, L. E. Larson, Fletcher Alguire and William Stringham, as County Commissioners of the said County of Minnehaha, and their successors in office, be enjoined and restrained from fixing an apportionment of benefits for the construction of the spillway, dams, retaining gates, ditches or other work upon the property of the Chicago, Milwaukee & St. Paul Railway Company and upon the property held by plaintiffs as receivers of said Chicago, Milwaukee & St. [fol. 84] Paul Railway Company, and be restrained and enjoined from making any assessment against plaintiffs or the property held by them as Receivers of said Chicago, Milwaukee & St. Paul Railway Company in the area of said Drainage Ditch No. 1, Drainage Ditch No. 2, or Drainage Ditch No. 1 & 2 for the cost of said work; that the de-

fendant, Fred A. Mundt, as Treasurer of Minnehaha County, South Dakota, his deputies and assistants, and his successors in office, and each and every of them, be restrained and enjoined from filing any assessment and from collecting any assessment against the property belonging to the Receivership estate of the plaintiffs or to the said Chicago, Milwaukee & St. Paul Railway Company, upon any assessment for the construction of said spillway, dams, retaining gates and ditches; and that the defendants herein, and each of them, their agents, servants, employees, and successors in office, be further restrained and enjoined as prayed in the bill of complaint herein until the final hearing herein or until the further order of this Court.

The plaintiffs further move that a three judge court constituted as required by law be assembled, and that the motion of plaintiffs for an interlocutory injunction herein be heard before said court as provided by law.

Dated, June 23, 1927.

Bailey & Voorhees and Hepperle & Fuller, Solicitors [fol. 85] for Plaintiffs. H. H. Field and O. W. Dynes, of Counsel.

[File endorsement omitted.]

[fol. 86] In United States District Court

[Title omitted]

Notice of Motion for Injunction and Marshal's Returns—Filed July 7, 1927

To William J. Bulow, Governor of the State of South Dakota, and to Buell F. Jones, Attorney General of the State of South Dakota, and to the above named Defendants, A. G. Risty, Chris Olson, L. W. Larson, Fletcher Alguire and William Stringham, as County Commissioners of Minnehaha County, South Dakota, Dale E. Howe, as County Auditor of Minnehaha County, South Dakota, and Fred A. Mundt, as County Treasurer of Minnehaha County, South Dakota:

You and each of you are hereby notified that the motion of the plaintiffs in the above entitled suit for an interlocu-

tory injunction, a copy of which said motion is hereunto annexed and herewith served upon you, will be brought on for hearing at the room used for the holding of the District Court of the United States for the District of South Dakota, Southern Division, in the Government Building in the City of Sioux Falls, in the District of South Dakota, upon the 7th day of July, 1927, at ten o'clock in the forenoon of that [fols. 87-89] day, or as soon thereafter as counsel can be heard, before a court comprised of three judges, of whom one will be a Circuit Judge, and that at said time and place and before said Court the plaintiffs will ask for an injunction as prayed in said motion and in their bill of complaint herein, and will ask that the defendants be restrained from enforcing the purported statute of the State of South Dakota, relating to drainage and drainage ditches.

Dated at Sioux Falls, South Dakota, June 30, 1927.

Bailey & Voorhees, Solicitors for Plaintiff. H. H. Field & O. W. Dynes, Of Counsel.

Motion omitted; printed side page 82 ante.

In United States District Court

[fol. 90] [Title omitted]

Marshal's Supplemental Return of Service on Notice of Hearing, etc.

I hereby certify and return that I served the within and attached Notice of Hearing and Motion for an Interlocutory Injunction on the therein-named defendant William Stringham, as a County Commissioner of Minnehaha County, South Dakota, on the 7th day of July, 1927, by handing to [fol. 91] and leaving true and correct copies thereof with him personally.

C. N. Leedom, United States Marshal, by J. A. Quigg, Deputy.

United States of America,
District of South Dakota, ss:

I hereby certify and return that the within Notice of Hearing and Motion for an Interlocutory Injunction came

into my hands for service on the 30th day of June, 1927, and that I served the same on the therein-named William J. Bulow, Governor of the State of South Dakota and Buell F. Jones, Attorney General of the State of South Dakota, at Pierre, South Dakota, on the 1st day of July, 1927, by handing to and leaving true and correct copies of the said Notice of Hearing and Motion for an Interlocutory Injunction with each of them personally.

C. N. Leedom, United States Marshal, by A. B. Neely, Deputy.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Notice of Hearing and Motion for an Interlocutory Injunction came into my hands for service on the 1st day of July, 1927, and that I served the same on the within-named defendants A. G. Risty, Chris Olson, L. E. Larson and Fletcher Alguire, as County Commissioners of Minnehaha County, South Dakota; Dale E. Howe, as County Auditor of Minnehaha County, South Dakota, and Fred A. Mundt, as County [fols. 92 & 93] Treasurer of Minnehaha County, South Dakota, on the 1st day of July, 1927, at the places and in the manner hereinafter described, to-wit: On Fletcher Alguire, Dale E. Howe and Fred A. Mundt at Sioux Falls, S. D., by handing to and leaving a true and correct copy thereof with each of them personally; on Chris Olson at Dell Rapids, S. D., by handing to and leaving a true and correct copy thereof with him personally; on A. G. Risty at 1½ miles Northwest of Corson, S. D., by handing to and leaving a true and corect copy thereof with him personally; on L. E. Larson at 3 miles east of Colton, S. D., by handing to and leaving a true and correct copy thereof with Tilda Larson, an adult member of the family of said L. E. Larson, at the dwelling house of the said L. E. Larson, he, the said L. E. Larson being not conveniently found.

I further certify and return that after a due and diligent search I am unable to find the within named defendant William Stringham within my district.

C. N. Leedom, United States Marshal, by J. A. Quigg, Deputy.

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

SHOWING IN RESPONSE TO MOTION FOR INTERLOCUTORY INJUNCTION—Filed July 7, 1927

Come now the above named defendants, A. G. Risty, et al., and for their return to plaintiff's Order to Show Cause herein say; that the motion for an interlocutory injunction and writ of prohibition should not be granted by this Court, for the following reasons, to-wit:

A

The above named defendants, A. G. Risty, et al., for their first showing allege and state that the plaintiff's bill does not state facts sufficient to constitute a cause of action against these defendants nor facts sufficient to warrant the issuance of a writ of prohibition against them because the defendant commissioners, as a drainage board, may have lost jurisdiction of the equalization proceedings as alleged in paragraph 25 of plaintiff's bill, for the reason that it does not appear that the jurisdiction of said defendants, [fol. 95] as a drainage board, has been challenged by objection or motion or otherwise, and the said board has overruled such challenge or otherwise expressed its purpose to proceed.

These defendants specifically deny any knowledge of having lost jurisdiction of said proceedings and allege that the facts upon which said alleged loss of jurisdiction is based have not been presented to them and they have not passed upon the said alleged facts.

These defendants further deny any intention of acting beyond or without jurisdiction in said matter.

Wherefore, these defendants pray the judgment of this Court that said bill be dismissed with their costs.

B

The above named defendants, A. G. Risty, et al., for their showing and response to said Order to Show Cause, allege that the said bill does not state any matter of equity en-

titling plaintiff to the relief prayed for, nor are the facts as stated sufficient to entitle plaintiff to any relief against the defendants, in that the plaintiff has a plain, adequate and complete remedy at law, in that under the South Dakota Revised Code of 1919, Section 6662 provides that in case any railroad company shall refuse or neglect to pay its taxes the County Treasurer, in addition to levying upon its rolling stock under Section 6606, the County Treasurer shall institute and maintain an action in Circuit Court against such company to collect the tax, and the railway company may set up by way of answer any defense which it may have [fol. 96] to the collection of said tax. Revised Code Section 6663 makes the aforesaid statute applicable to any special assessment levied against the railway companies (drainage assessments) and said suit, if involving more than Three Thousand Dollars ($3,000.00), may be removed to the United States District Court and tried upon the law side of the Federal Courts. The same statute also makes all taxes against a railway company a personal tax to be enforced only by seizure and sale of its personal property, and the said tax never becomes a lien or cloud upon the title of said railways real property used for railway purposes.

Wherefore, these defendants pray judgment of this Court that said bill be dismissed with costs.

C

Come now the above named defendants and for their further return to the plaintiff's Order to Show Cause herein, say; that the motion for an interlocutory injunction should not be granted by this Court for the following reasons, to-wit:

That on or about the 4th day of November A. D., 1910, the Board of County Commissioners of Minnehaha County, South Dakota, entered an Order in the matter of Drainage Ditch No. 2 after notice and hearing, equalizing and fixing the proportion of benefits against plaintiff, for benefits obtained for its right-of-way in said drainage ditch assessment area and the said Chicago, Milwaukee & St. Paul Railway Company appealed from said Order to the Circuit Court of Minnehaha County, South Dakota and did, thereupon, remove said cause to the United States District Court

of South Dakota, Southern Division, said Court being a [fol. 97] Court of competent jurisdiction and said action being between the same parties as here litigating, upon the same subject matter, namely, the liability of the plaintiff to be assessed for the cost of reconstruction or repair of Drainage Ditch No. 2—or Drainage Ditch No. 1 & 2, and, the basis therefor, and for the same purpose as this suit is being prosecuted, that is, to determine whether or not any assessment should be made against said plaintiff. The said parties did therein enter into, file and present to said Court their signed stipulation wherein they agreed that judgment be entered therein "fixing the equalized proportion of benefits chargeable to the plaintiff for benefits to its said right-of-way in said matter, in the number of units that will, when the final assessment is made in said Drainage Ditch proceedings, produce the sum of Eighty Five Hundred Dollars ($8,500.00), and that the said money assessment so made shall be entered against said railway company in the sum of Eighty Five Hundred Dollars," and pursuant to said stipulation, on January 15, 1912, a judgment was duly and regularly entered therein adjudging that the equalized proportion of benefits made by the Board of County Commissioners of said County on November 4, 1910, be and the same is hereby modified by reducing the number of units assessed against the right-of-way of the Chicago, Milwaukee & St. Paul Railway Company as laid out and across sections (in said assessment area described) from two hundred fifty seven units to a number of units that will, when [fol. 98] the final assessment is made in said Drainage Ditch proceedings, produce the sum of Eight Thousand Five Hundred Dollars ($8,500.00), and further adjudged that the money assessment should be no more and no less than said sum of money.

That the said judgment fixing the amount of plaintiff's said benefit and assessment on Drainage Ditch No. 2, is still in full force and effect.

That thereafter, pursuant to said judgment, the assessment was made against the plaintiff in the sum of Eighty Five Hundred Dollars ($8,500.00), and said sum was, on April 8, 1912, paid by the plaintiff.

That the total cost of Drainage Ditch No. 2, as determined by the said drainage board was Eighty-one Thousand One

Hundred Six & 11/100 Dollars ($706.11) and the Eight-Five Hundred Dollars ($8,500.00) agreed upon and paid by the plaintiff constituted 10.48% of the total cost of said Drainage Ditch No. 2, which fixes the proportion of the total cost of repair on said Drainage Ditch No. 2, which must be borne by the plaintiff and determines the basis of the assessment to be made against the plaintiff.

The defendants further allege that the proportion of benefit and assessment against the plaintiff for benefit to its property resulting from the construction of Drainage Ditch No. 1, was the sum of Seven Hundred Twenty-one & 12/100 Dollars ($721.12) which sum was paid by the plaintiff on January 7, 1910.

[fol. 99] D

Come now the above named defendants and for their further return to the plaintiff's Order to Show Cause herein, say: that the motion for an interlocutory injunction should not be granted by this Court for the following reasons, to-wit:

That on or about the 20th day of July, A. D., 1921, the plaintiff herein filed in the office of the Clerk of the District Court of the United States for the District of South Dakota, at Sioux Falls, South Dakota, its Bill in Equity wherein the said plaintiff was plaintiff, and the above named County Commissioners, County Auditor and County Treasurer, or their predecessors in office were defendants; that in the said former suit (paragraph Fifth) the plaintiff alleged:

"That prior to the year 1916, the Board of County Commissioners of the said County of Minnehaha established within said County a drainage ditch known as 'Drainage Ditches No. 1 and No. 2', which drainage ditches were designed for the purpose of draining upwards of twenty thousand acres of agricultural land situated in Townships 101, 102, 103 and 104, North, of Range 49, West of the Fifth Principal Meridian, in the said County of Minnehaha; that said drainage ditches were established pursuant to and under the provisions of said purported Law known as Chapter 134 of the Session Laws of South Dakota of 1907, [fol. 100] and extended for a distance of several miles through said townships, and were fully completed prior

to the year 1916; that an assessment for the cost of the construction of said drainage ditches No. 1 and No. 2 was prior to the year 1916 made; and that all matters connected with the construction of said ditches and with the assessment of the costs thereof were fully completed prior to the year 1916."

and the plaintiff further alleged in the Twenty-second paragraph of said Bill of Complaint as follows:

"That said purported statute of the State of South Dakota, 'Exhibit A' hereto, is unconstitutional and void, in that the same is in violation of Section 2 of Article VI of the Constitution of the State of South Dakota, and in that the same is in violation of the Fourteenth Amendment of the Constitution of the United States; that said Statute, 'Exhibit A' is further void and unconstitutional in that the same provides no fixed and determinable method or rule for the apportionment of benefits upon the property and property owners situated within the drainage area, and especially in that said purported statute furnishes no fixed or determinable basis for the apportionment of benefits upon the property of railroad company and other corporation, and upon the property of municipal and quasi-municipal corporation, and upon platted property in cities and villages. Said purported law, 'Exhibit A' is further unconstitutional and void in that the same provides for an [fol. 101] assessment against property without the right of the property owner to be heard thereon and without notice of any character to the property owner; that if said apportionment of benefits be made as threatened by the said board of county commissioners of said Minnehaha County, and as is provided in said notice, 'Exhibit C,' the same will constitute the taking of the property of plaintiff and of the other property owner affected by said notice without due process of law; that a cloud will be placed upon the title of the plaintiff to its real property situated within said drainage area (effected) by said notice, 'Exhibit C,' and that there will result a multiplicity of suits and that plaintiff and other property owners (effected) will suffer irreparable injury."

and these defendants, in their answer in the former suit, admitted that establishment and construction of Drainage

Ditch No. 1 in 1907 and the establishment and construction of Drainage Ditch No. 2 covering the same and additional territory as an enlargement project in 1910 and the defendants specifically denied that said drainage law was violative of the Fourteenth Amendment to the Constitution of the United States; that issues were joined therein and presented, tried and determined, and an opinion and findings by the District Court filed therein upon the 23rd day of February A. D., 1922, and thereafter, on the 2nd day of March A. D., 1927, a Decree or Judgment was entered therein, wherein it appears that said judgment was rendered by a Court of competent jurisdiction between the [fol. 102] same parties, upon the same subject matter, and for the same purpose as this suit is being prosecuted, namely, for the purpose of having it adjudged and determined that the same South Dakota Drainage Statute is unconstitutional and void, in that it violates the Fourteenth Amendment to the Constitution of the United States, as the same was particularly alleged and set out in paragraph twenty-two of said Bill in the above described suit, and as the same is set out and alleged in paragraph twenty-sixth of the Bill of Complaint in the above entitled action.

That in the said former action it was conceded and found that both ditches (No. 1 and No. 2) had been lawfully established and the constitutional question here presented was clearly alleged by plaintiff and denied by defendants and squarely presented, and in passing upon the issues there presented the Court necessarily must have and did pass upon the constitutionality of the said South Dakota Drainage Statute, and said Court made findings and held in unequivocal terms that the said Drainage Statute of South Dakota does not violate the Fourteenth Amendment to the Constitution of the United States, and held that the said South Dakota Drainage Law is constitutional; that said determination by the said United States District Court of South Dakota has never been appealed from, reversed or modified in any particular, and the said judgment and determination therein upon such findings of fact and law is now in full force and effect.

These defendants further allege and show that the above described cause was, by these defendants, appealed to the Circuit Court of Appeals and to the Supreme Court of the [fol. 103] United States, but as to the ruling of this Court

upon the constitutionality of the South Dakota Drainage law no assignment of error was made in either of said Courts and consequently the ruling of the District Court was permitted to stand thereon as the final judgment. It was the ruling of the District Court that Drainage Ditch No. 1 and Drainage Ditch No. 2 were lawfully established and that the work done in reconstruction thereon constituted repair work to be paid for by assessment of the property in said Drainage Ditch No. 2 assessment area and upon the apportionment previously made thereon and this was the holding of all three Courts and the same is the established law of the case as to this plaintiff.

By reason of the foregoing, the plaintiff herein is barred and estopped from further alleging and litigating the question of the legality of the establishment of Drainage Ditch No. 1 and Drainage Ditch No. 2 and alleging that the South Dakota Drainage law is violative of the Fourteenth Amendment to the Constitution of the United States and the said plaintiff is now bound by the said former determination and judgment of this Court, that the said Drainage Ditch No. 1 and Drainage Ditch No. 2 were lawfully established and said Drainage Law is constitutional, and precluded from further litigating said question.

E

And for further reasons why the motion of H. E. Byram et al. as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, plaintiffs herein, for an interlocutory injunction should be denied, these defendants show the Court:

[fol. 104]

I

That these defendants admit Paragraph 1 of plaintiff's bill of complaint.

II

That these defendants admit Paragraph 2 of plaintiff's bill of complaint.

III

That these defendants admit Paragraph 3 of plaintiff's bill of complaint.

IV

That these defendants admit Paragraph 4 of plaintiff's bill of complaint.

V

That Chap. 98, Session Laws 1905, Chap. 134, Session Laws 1907, Chap. 102, Session Laws 1909, Chap. 130, Session Laws 1911, Sec. 8458 to and including Sec. 8491, Revised Code of 1919 and amendments thereto, including Chap. 46, Session Laws 1920, constitute the drainage law of the state of South Dakota.

VI

That these defendants admit the establishment of Drainage Ditch 1 and Drainage Ditch 2 mentioned in Paragraph 6 of plaintiff's bill of complaint, and in relation thereto allege: That on or about July 1, 1907, one William H. Lyon filed with the then Board of County Commissioners his petition in writing, among other things alleging

[fol. 105] "That it is necessary for the drainage of agricultural lands in said Big Sioux Valley between the dam of the Cascade Milling Co. (the Eighth Street bridge) in the city of Sioux Falls and the city of Dell Rapids that the proposed drainage be established,"

and among other things prayed for the establishment and construction of a ditch with its initial point near the place where the Big Sioux River crosses the center line of Sec. 5, Twp. 101, Range 49, running thence southeasterly to a terminal point on said river in Sioux Falls near the center line of Sec. 9, said township and range, being in all about three miles in length; that thereafter such proceedings were had thereon pursuant to law that the then Board established said ditch with a bottom width of approximately 40 feet and designated the same as Drainage Ditch No. 1. That an apportionment of benefits was made and equalized, pursuant to notice duly given, among the lands and properties affected, and assessments as provided by law were made, and said drainage ditch was completed, accepted and paid for by assessments upon the property benefited thereby, at a cost of approximately $46,000, which proportionate as-

sessment as to this plaintiff was paid by the plaintiff railway company herein. That before the completion of said Ditch No. 1, Iver R. Peterson and others filed with the Board a petition and bond praying for the establishment of an enlarged or additional ditch, with its initial point near the place where the Sioux River crosses the south line of Sec. 5 of Mapleton Twp. and its terminal point in the upper end [fol. 106] of said Ditch No. 1, as then established; and that thereafter and on Jan. 8, 1909, A. L. Burg and others filed a petition and bond with the then Board praying that said Board, in acting upon the petition of Iver R. Peterson and others for said enlarged drainage ditch, cause- the same to be extended about twelve miles farther north, and that all of said ditch be made a part of an enlargement of Ditch No. 1, and as a part of said enlarged ditch there be established a ditch on the west side of the Sioux River from a point above the Baltic mill dam southerly to a suitable place on the Sioux River in Sec. 18 in Sverdrup Township, and that a proper outlet be made on the east side of the river for taking care of the surplus waters so dumped into it at said terminal point; and that such proceedings according to the law were had pursuant to said petition and upon notice and hearing that the Board established and thereafter, on May 6, 1909, caused to be constructed and completed an enlarged ditch including all of Drainage Ditch No. 1 district, designated as Drainage Ditch No. 2 of Minnehaha County, South Dakota, with a bottom width of approximately 40 feet, at a cost of approximately $81,000.

That thereafter the Board fixed and apportioned the benefits from said ditches upon the lands and property affected, thereby including all lands and property previously apportioned and assessed for Drainage Ditch No. 1, and including the property set forth in plaintiff's bill of complaint herein; and that this plaintiff Railway Company paid its proportionate share of said benefits so assessed against it.

And these defendants admit, as alleged in said Para- [fol. 107] graph 6 of plaintiff's bill of complaint, that all matters connected with the construction, apportionment and assessment for the costs of said Ditch 1 and Ditch 2 were fully paid for and completed prior to the year 1916.

VII

That these defendants admit Paragraph 7 of plaintiff's bill of complaint.

VIII

That these defendants admit all of Paragraph 8 of plaintiff's bill of complaint except that they allege that the lands on either side of said river channel, as said channel passes through Townships 104, 103, 102 and 101, rise to some height above the normal water level of said river in said channel.

IX

That these defendants admit Paragraph 9 of plaintiff's bill of complaint and further allege that the washing out of the spillway and the channel on March 15, 1916 was caused by a breach made by the river through a natural barrier existing between the river and a short lateral ditch constructed about two and one-half miles north of the southern terminal point of said ditch, thereby permitting the river to flow unobstructed into the short lateral ditch and into the lower end of said drainage ditch.

And the defendants further allege that said Board of County Commissioners of Minnehaha County are by Sec. 20, Chap. 134, Laws 1907, now Sec. 8477, Revised Code of South Dakota, authorized, directed and commanded to keep [fol. 108] drainage ditches in repair and that pursuant thereto the said Board of County Commissioners, by order, placed dams in said ditches so running uncontrolled in order to control the same and to prevent damage to the persons and properties affected and being affected thereby. And that thereupon one Charles Kaufman and others who were like affected, subject to the payment of special assessments and taxes, and who owned land and property in said drainage area, in like manner and in the same class as the plaintiff railway company herein, instituted an action in the Circuit Court of Minnehaha County, South Dakota, being a court of general jurisdiction, in the verified complaint of which it is alleged:

"That the lands and property of each and all of the above named plaintiffs are situated and located in proximity to each other, to the aforesaid drainage ditch (Ditch No. 2)

and to the Sioux River lying north and above a certain branch of the aforesaid drainage ditch, which connects with the said Sioux River in the northeast quarter of Sec. 32 in Mapleton Twp., all of which lands are flat and low-lying and subject to floods unless the surplus waters of the Sioux River are carried off by the aforesaid branch of said drainage ditch, and all of which said lands are now actually drained by said drainage ditch.

"That the defendants above named threaten and are about to construct a dam across said drainage ditch at the point where it connects with the Sioux River in said Sec. 32, of such material and construction as to divert the flow of water in said drainage ditch and prevent the flood waters of the said Sioux River from flowing through said drainage ditch, and said defendants, in furtherance of said threats and intentions, have caused to be transported to said place [fol. 109] large quantities of material to be used in the construction of said dam, and have caused to be employed a large number of men for the purpose of erecting said dam, and have actually commenced the construction of said dam and will, unless restrained by this court, carry said threats and intentions into execution.

"That the construction of said dam as aforesaid and in the place aforementioned will cause great and irreparable injury to the lands of the plaintiffs and many other owners of lands similarly situated and will cause the flood waters of the said Sioux River to back up and flood the lands of plaintiff and others, and to remain on said lands for many weeks, thereby depriving the owners of the use and occupation of the lands and property so flooded, and will at the same time prevent said drainage ditch from being used for the purpose for which it was constructed and is now maintained,"

which said action prayed for an injunction against the defendant Board of County Commissioners of Minnehaha County, South Dakota, from erecting said dam, and that pursuant thereto and the order to show cause issuing out of said court, an order and judgment was entered by said court on March 25, 1916, upon hearing had, as follows:

"It is hereby ordered that said application for a temporary restraining order be and the same is hereby denied,"

whereupon said action was dismissed; which said suit is contained in File No. 15708 of the office of the clerk of the [fol. 110] circuit court within and for Minnehaha County, South Dakota. And that said cause was never appealed and that said order was the final order in said cause, and that said order and judgment is a final, binding and controlling order upon this plaintiff Railway Company in said matters as a member of the same class of taxpapers as the plaintiffs in said action.

X

These defendants admit that if said breach had become permanent, that it would have operated to have relieved lands drained thereby, but allege the fact that, as set forth in the foregoing paragraph, it was the duty of the Board as exhibited by the drainage law of South Dakota and the adjudication aforesaid, to keep in repair said drainage ditch and prevent damage being done thereby.

XI

That immediately after the entry of the order and judgment in the case of Kaufman and others vs. Board of County Commissioners above mentioned, and on or about April 8, 1916, some of the plaintiffs in said last mentioned action and others filed a petition and bond with the Board, praying that the outlet and spillway to said ditches be closed and abandoned, and that a new outlet be provided by diverting the waters thereof at a point approximately one mile north of the outlet thereof to a westerly direction through Covell Lake and thence back into the Sioux River above the city of Sioux Falls; upon which petition the Board caused a survey to be made, report filed and a hearing had, after notice as required by law, at which time many objec- [fol. 111] tions and claims for damages were filed; and upon hearing, on July 8, 1916, the Board allowed the petition and lawfully established said Covell Lake outlet, which order, among other things, provided:

"Resolved, that the repair and maintenance of said Drainage Ditches 1 and 2 and the establishment and construction of said proposed extension to or outlet to Drain-

age Ditch No. 1 will be conducive to the public health, convenience and welfare and it is necessary and practicable for draining agricultural lands, and it is so found.

"Be it further Resolved, that said Drainage Ditch No. 1 be permanently closed above the present spillway or outlet thereof at a point on the west bank of Drainage Ditch No. 1 1,610 feet north and 58 feet west of the southeast quarter of Sec. 5, Twp. 101, Range 49, where said ditch swings southeasterly from a southerly direction, and that a new extension to or outlet of said ditch commencing at said point and running thence southeasterly through Covell's lake, etc. be constructed, and that such extension or outlet be and the same is hereby established."

That no further steps were taken under the establishment of the Covell Lake Outlet, and after conferences held between parties affected, a new petition signed by the City of Sioux Falls, F. L. Blackman and others, was filed with the County Auditor on August 3, 1916, which petition, among other things, alleged:

[fol. 112] "That Drainage Ditches Nos. 1 and 2 and the outlet thereto as constructed were and are insufficient to accomplish the purpose for which they were constructed and insufficient to properly drain the agricultural lands within the district or territory supposed to be drained thereby, and insufficient for the drainage of other agricultural lands between the mouth or outlet thereof and the land heretofore included within the assessment districts of Drainage Ditches Nos. 1 and 2; that it is necessary for the drainage of agricultural lands within said drainage districts 1 and 2 and also agricultural lands lying above the mouth of said spillway and between the mouth thereof and the present boundaries of said Drainage Ditches Nos. 1 and 2, to reconstruct, widen and improve said Drainage Ditches Nos. 1 and 2, and to construct a new outlet or spillway thereto, and that in the reconstruction of the same it will be necessary that the same be cleaned, deepened and widened and that certain levees, dikes, flood gates and barriers thereto be constructed, to such an extent as might be necessary to carry off the surplus or flood waters and properly drain and protect the lands within said drainage districts and within the areas hereinafter described; that

to make the foregoing drainage system complete and adequate for the purpose for which it was designed, it will be necessary to widen, clean out and deepen the channel of the Big Sioux River in a number of places within the drainage district. * * * That the lands and territory likely to be affected by the construction of the new spillway and the reconstruction and improvement of said drainage ditches [fol. 113] and which will be drained and benefited and protected thereby, include all the lands lying in the valley of the Big Sioux River, and included within the present boundaries of said drainage districts Nos. 1 and 2, as well as all the lands in the valley of the Big Sioux River between the mouth of said spillway and the city of Dell Rapids that are subject to overflow and will be subject to overflow by the waters of said river if the outlet to said Ditches No. 1 and 2 be abandoned and said outlet closed, and that said drainage districts should be so extended and enlarged as to include all lands and property benefited thereby as far down the valley of the Big Sioux River as the mouth of the outlet or spillway * * *."

which petition was accompanied by bond, approved by the county auditor, was examined by the Board, found sufficient in form, ordered filed, a copy transmitted to the state engineer, who with the Board made an inspection and a survey was then ordered by an assistant state engineer and his preliminary report filed September 30, 1916. On August 14, 1916, said Board fixed the exact line and width of said proposed ditch and the time and place for hearing said petition and gave notice as required by law; which notice, among other things, described the tract of country likely to be affected thereby, included in which description are the properties described in plaintiff's bill of complaint herein, which are affected and benefited thereby, and on October 3, 1916, pursuant to said notice, without any objection, said Board passed a resolution wherein it was ordered, among other things, as follows:

[fol. 114] "Be it Resolved, by the Board * * * that said principal ditch as hereinafter described and set forth, is conducive to the public health, convenience and welfare, and is necessary and practicable for the drainage of agricultural lands, and it is so found.

"Be it Resolved, that said drainage ditch as hereinafter described be and it is hereby named and designated as Drainage Ditch No. 1 and 2.

"Be it Resolved, that said Drainage Ditch No. 1 and 2 be and the same is hereby established in accordance with the resolution adopted by this Board * * *," the center line of which ditch so established being the same as the center line of Ditch No. 1 and Ditch No. 2 and covering the same right of way and territory. And that said ditch was constructed with a bottom width of approximately 90 feet, with dikes on both sides, controlling works installed, and the Sioux River straightened and canalized for about six miles of its course, greatly increasing its carrying capacity.

That the Board, not to prevent the threatened change in the channel, injury to property owners and destruction of the water power and water supply, but pursuant to said petition, and not otherwise, established and constructed Drainage Ditch No. 1 and 2, and that the effect thereof has been to drain the lands and properties within said drainage area, and these defendants deny that said lands and properties have been damaged or the crops grown thereon have been damaged, and that the value of the land has been thereby lessened.

[fol. 115] And these defendants deny each and every other allegation, matter and statement contained in Paragraph 11 of plaintiff's bill of complaint, except as hereinbefore expressly admitted.

XII

These defendants admit that drainage warrants in the sum of $255,000 have been issued by the Board in the construction work and material furnished upon the aforesaid Drainage Ditch No. 1 & 2; but deny that said work was done to control or retard the flow of water or prevent the change in the channel or drainage of the gravel beds, and allege the fact to be that said work was done pursuant to said petition and not otherwise, and deny that the percentages of the total cost was expended as alleged in said Paragraph 12 of plaintiff's bill of complaint.

XIII

These defendants allege that in August, 1916, a petition signed by the City of Sioux Falls, F. L. Blackman and others, was filed with said Board and that pursuant to said petition, upon lawful proceedings had, there was established a drainage known as Drainage Ditch No. 1 & 2, and that the expenditures made by said Board were made pursuant to said petition, and that the establishment of said ditch, the work done and performed thereon, and the expenditures made therefor, by issuance of drainage warrants, have been held lawful and valid by the Supreme Court of the State of South Dakota in the case of State v. Risty et al., reported in 213 N. W. 952; Gilseth v. Risty, reported in 46 S. D. 374; which decisions are hereby referred to and made a part of this return and resistance to said motion. And that these [fol. 116] defendants deny each and every other allegation, matter and statement contained in Paragraph 13 of plaintiff's bill of complaint, except as hereinbefore expressly admitted.

XIV

These defendants admit that prior to the construction of said spillway, dams, retaining gates, ditches and other work, they did not fix the proportion of benefits of said proposed drainage, did not appoint a time and place for equalization of the same, and did not give notice of said equalization; and allege the fact to be that such acts are not by law required by the Board prior to the doing of such construction work, as the drainage statutes have been interpretated by the Supreme Court of the State of South Dakota in the case of Renville State Bank v. Kingsburg, 40 S. D. 191; State v. Risty (S. D.) 213 N. W. 952; and these defendants further admit that they did not make any assessment for the payment of damages caused by the construction of said spillway, dams, retaining gates and ditches, but allege the fact to be that they did pay said damages by the issuance of drainage warrants therefor, and that they are and were, by Sec. 8464 and Sec. 8467, Code 1919, authorized and empowered to pay said damages by the issuance of warrants payable out of assessments to be subsequently made.

XV

These defendants allege that prior to the work done and performed upon said project, plans and specifications were prepared and filed, and that contracts for said work were let upon competitive basis, except as to the construction of [fol. 117] said spillway, which said work was done upon a cost plus basis upon the order of said Board dated June 18, 1917. That upon the entry of said order, one William H. Lyon, an owner of real estate and property within the drainage area of Ditch 1, Ditch 2, and Ditch 1 & 2, affected and benefited thereby, and a person similarly situated and like affected and one obliged to pay the special assessments for the construction of said drainage in like manner as this plaintiff, and in a class with this plaintiff, perfected on appeal from said order to the Circuit Court within and for Minnehaha County, South Dakota, which order provided:

"Ordered, that the Board of County Commissioners cause said spillway to be constructed, hire the necessary labor, machinery, tools and appliances, and a superintendent to oversee the construction thereof, purchase the necessary material for such construction, without letting a contract for the entire construction thereof,"

which said appeal came on for hearing before said court on July 14, 1917, and said court, after a full hearing and consideration of the evidence in behalf of the appellant and the Board, entered its order dismissing said appeal and affirming the order of the Board ordering such construction, said court thereby holding that it appears that the "decision appealed from is one that rests in the sound judgment of the Board of County Commissioners and is not a proper subject for review by the court;" which said proceedings of said Board was had under Chap. 206, Session Laws 1917, now Sec. 8465, Code 1919; and that said proceedings upon said appeal are contained in File No. 16405 of the Circuit Court of Minnehaha County, South Dakota, which file and pro- [fol. 118] ceedings are hereby referred to and made a part hereof, and that said decision has never been appealed from and is final and binding upon the plaintiff railway company

herein, who is in a like class of taxpayers with the said plaintiff in said appeal.

That the plaintiff Railway Company herein had due notice and knowledge of said proceedings of the Board in letting said contract and of the work performed and labor furnished thereunder, and took no steps to stop the same, and with such notice and knowledge stood by until an expenditure of approximately $255,000 had been made by said Board, and the said plaintiff has waived its right to now question the validity thereof and is estopped from questioning said proceedings or the validity thereof.

XVI

These defendnats admit Paragraph 16 of plaintiff's bill of complaint.

XVII

That these defendants admit Exhibit C is a copy of the notice of apportionment and equalization of benefits made by the Board and that the same was published July 13 and 20, 1921 in the Sioux Falls daily Argus-Leader, the official newspaper of Minnehaha County, and further allege that the same was posted as required by law, and admit that the total number of units of apportionment of benefit therein set forth is 32,549.62, and that the number of units against the property described in Paragraph 17 of plaintiff's complaint have been apportioned thereto as therein set forth, but deny that the assessment against the property of the Chicago, Milwaukee & St. Paul Railway Company will be as in said paragraph alleged, for the reason [fol. 119] that since the institution of the suit between the parties hereto in the U. S. District Court within and for the District of South Dakota, and on or about July 25, 1921, that said federal courts have held that the work and labor done and performed and material furnished in the enlargement of said Drainage Ditch No-. 1 & 2 is repair work and that said drainage ditch is not an enlarged drainage ditch, and that by reason thereof the assessment upon plaintiff's property must be made in accordance with the drainage law for assessments for repair work.

XVIII

These defendants admit Paragraph 18 of plaintiff's bill of complaint.

XIX

These defendants admit Paragraph 19 of plaintiff's bill of complaint.

XX

These defendants admit Paragraph 20 of plaintiff's bill of complaint and allege the fact to be that the properties therein described are the properties assessed for benefits for Drainage Ditch 1 and Drainage Ditch 2, and that said properties may be assessed for benefits for the work and labor done and materials furnished in what has been held by the federal courts as repair and maintenance of said Ditch 1 and Ditch 2.

XXI

That these defendants admit Paragraph 21 of plaintiff's bill of complaint.

[fol. 120]

XXII

These defendants allege that the right of way of said Railway Company as described in Paragraph 17 of plaintiff's bill of complaint is agricultural land, and admit that plaintiff is a railway corporation and owns a line of railroad in said Minnehaha County, and that its property consists of right of way, station grounds, yards, bridges, culverts, and other property employed in the maintenance and operation of its said Railway, and admit that it is not engaged in agricultural operations, and specifically deny that plaintiff has received no benefit and has suffered damages, and allege the fact to be that the plaintiff herein was given notice by publication and posting as required by law of the establishment and formation of said Drainage Ditch No. 1 & 2, which notice described the route of the proposed drainage, the tract of country likely to be affected thereby in general terms, the separate tracts of land through which the drainage would pass, and the names of the owners thereof as appears from the records of the office of the

Register of Deeds on the date of filing of said petition, and referred to the files in said proceedings for further particulars, the same as all other owners of tracts and property affected in said area were notified and as provided by law.

XXIII

That these defendants admit that this is a suit of a civil nature brought to prevent an assessment against the plaintiff under an act of the Legislature of the State of South Dakota claimed by plaintiff to be in conflict with the due [fol. 121] process of law clause of the Fourteenth Amendment to the Constitution of the United States, and allege the fact to be that the amount in controversy herein exceeds, exclusive of interest and costs, the sum of $3,000; and denies each and every other allegation, matter and statement contained in said Paragraph 23 of plaintiff's bill of complaint.

XXIV

That under the decisions and holdings of the above named Court, the Circuit Court of Appeals for the Eighth Judicial Circuit and the Supreme Court of the United States, in a case between the parties hereto upon the issues herein, tendered in said courts, that as to this plaintiff Railway Company the construction of the spillway, dams, retaining gates, ditches and other work done and performed upon Drainage Ditch 1 and Drainage Ditch 2, and under the proceedings designated as Drainage Ditch No. 1 & 2, that said work and material constituted repair and maintenance of said old ditches.

That said Drainage Ditch No. 1 was instituted by the petition of W. H. Lyon, which said petition was accompanied by a bond, which was duly approved as provided by law, examined by the Board and found sufficient and ordered filed. And that due and lawful notice, as provided by law, was given of the hearing upon said petition after the width and route of the same had been fixed, and that at said hearing and the time and place appointed therefor, this plaintiff Railway Company appeared, and on December 30, 1907, filed its protests against the establishment of the same, alleging among other grounds that the petition did not state

facts sufficient to authorize any action by the Board; that [fol. 122] it did not set forth facts showing whereby plaintiff Railway Company would be benefited, and that in accordance with the survey filed, the plaintiff Railway Company would in no manner be benefited, and by reason thereof was not a proper party to said proceedings; and that said Board was without jurisdiction over said plaintiff Railway Company; that the notice published and posted for said hearing, a copy of which was made part of said protest, was insufficient and did not set forth facts sufficient to constitute a legal notice as provided by law, in that the same particularly fails to set forth the description of the lands to be crossed and benefited by the construction of said ditch; that no personal notice was given to said plaintiff Railway Company, and that the profile and notes filed by the surveyor failed to show that the ditch was practicable and feasible and that the same was insufficient under the provisions of said drainage law; that the said ditch, as proposed, would not be conducive to the public health, convenience or welfare, nor was it needed nor was it practicable for the drainage of agricultural lands, and that the same was not feasible and would not drain lands sought to be charged with the benefits, and that the same, if constructed, would not carry the water through the ditch and would be a detriment instead of a benefit; and that said law is unconstitutional and in violation of Sec. 13 of Art. 6 of the Constitution of South Dakota. But that said protest was denied, and said plaintiff Railway Company failed to take any appeal therefrom, and that thereafter said drainage ditch was established by the order of the Board of County Commissioners of Minnehaha County, South Dakota, and the work done and performed thereon. That [fol. 123] during the course of the construction of said Drainage Ditch No. 1, petitions were filed to extend and enlarge said Drainage Ditch No. 1, and that such proceedings were had thereon, pursuant to law, that there was thereafter established and constructed what is known as Drainage Ditch No. 2, included in which was the territory covered by Drainage Ditch No. 1.

That an apportionment was made by the Board, and a notice of the apportionment made for the costs of construction of Drainage Ditch No. 1 was posted as required

by law and published in the Sioux Falls daily Argus-Leader, being an official newspaper of Minnehaha County, South Dakota, for two successive weekly publications prior to said hearing on April 17, 1908, and April 24, 1908, and that said notice of apportionment fixed a time and place for equalization of the proportion of benefits to the several lands, tracts, lots, streets and railways embraced within said drainage district No. 1 which would be benefited by the construction thereof, gave the route of said Drainage Ditch No. 1 and made references to the maps and profiles of said ditch on file in the office of the County Auditor, gave the bottom width of said ditch and the exact course thereof, and notified all such owners and all persons interested, and summoned said persons to show cause at the time and place appointed, namely, May 5, 1908, at two o'clock P. M. at the office of the County Auditor of Minnehaha County, South Dakota, in the court house in said county and state, why the proportion of benefits should not be fixed as stated, and said determination of said Board made final, and as to this plaintiff, after naming this plaintiff Railway Company, gave the descriptions of the property benefited and the number of units, as set forth in Paragraph 20 of plaintiff's bill of complaint.

[fol. 124] That thereafter and on October 10, 1910, the Board of County Commissioners of Minnehaha County, South Dakota, fixed the apportionments of benefit for Drainage Ditch No. 2, and gave notice thereof, by posting said notice as required by law and publication thereof in the Sioux Falls daily Argus-Leader, an official newspaper of Minnehaha County, South Dakota, on October 15 and 22, 1910, which notice fixed Thursday, November 3, 1910 at two o'clock P. M. at the office of the County Auditor of Minnehaha County, South Dakota, in the county court house in said county and state, as the time and place for equalizing the proportion of benefits to the several lands, tracts, lots, streets and railways embraced within said drainage district, describing the route of said Drainage Ditch No. 2 in detail, gave the bottom width of said ditch and gave notice to and summoned all persons interested and affected thereby to show cause at the aforesaid time and place why the proportion of benefits should not be fixed as stated, and said notice and determination of said Board made final,

which said notice named the plaintiff Railway Company and described the property benefited and apportioned the number of units as set forth in Paragraph 20 of plaintiff's bill of complaint. And that thereafter the said plaintiff Railway Company paid its proportionate share of the cost of said ditch.

That by reason of the decision of said federal cases, this plaintiff Railway Company must now be assessed in accordance with the provisions of law in relation to repair and maintenance of said old ditch No. 1 or Ditch No. 2, and that plaintiff Railway Company herein has had its day in court and received the notices hereinbefore mentioned and described.

[fol. 125] It is further alleged that said notices, as well as Paragraph 20 of plaintiff's bill of complaint, show clearly the property that may be assessed for the repair and maintenance of said ditches.

That these defendants deny each and every other allegation, matter and statement containeed in Paragraph 24 of plaintiff's bill of complaint, except as hereinbefore expressly admitted.

XXV

These defendants allege that on August 1, 1921, they met pursuant to said notice and hearing upon equalization, Exhibit C, and no one appearing before them and the plaintiff herein not filing any written objections with said Board against the apportionment made, entered its order as follow:

"Therefore, Be it Resolved that the consideration and equalization of the proportion of benefits on Drainage Ditch No-. 1 and 2 be and the same is continued and adjourned until the 22d day of August, 1921 at two o'clock P. M. of that day",

which order and resolution of adjournment was again passed from time to time until the 4th day of April, 1924, which said adjournments were caused by the interlocutory order of the above named court. That on the 4th day of April, 1924, these defendants met pursuant to order of adjournment and made and entered the following resolution and order of adjournment:

"Whereas none of the persons heertofore notified in the notice heretofore given herein appeared at the time indicated and filed protests or objections to the proportions of benefit tentatively fixed by the Board, or at all,

[fol. 126] "Therefore, Be it Resolved that the Board of County Commissioners, for the purpose of entering their order finally equalizing and fixing the proportion of benefits received, pursuant to said notice (Exhibit C) and as tentatively fixed, be further continued and adjourned to the 5th day of November, 1924 at 2 o'clock P. M. of said day",

which order and resolution of adjournment has from time to time been again passed by said Board, and that the next adjourned meeting of said Board upon said notice of hearing is July 9, 1927; and these defendants further allege that they have not lost jurisdiction of said matter or to enter their final order herein, as their said proceedings have been interpreted by the Supreme Court of the State of South Dakota in the case of State v. Risty, et al., reported in 213 N. W. 952.

And they further allege that said Exhibit C, under the decisions of the federal courts in the case presented to said courts in which the parties hereto were the respective parties thereto, and in which the issues made were the same as the issues herein, is surplusage and that the plaintiff Railway Company herein must, under said decisions, be assessed to pay the costs and repair of said Drainage Ditch No. 1 or Drainage Ditch No. 2 under the law governing the same.

That these defendants deny each and every other allegation, matter and statement contained in said Paragraph 25 not hereinbefore expressly admitted.

[fol. 127] XXVI

These defendants deny that the drainage laws set forth in Paragraph 5 of plaintiff's bill of complaint were and are unconstitutional and void and in violation of the Fourteenth Amendment to the Constitution of the United States, and allege the fact to be that said law does provide for the selection of a tract of any kind of land or property in the drainage area by said Board, the benefit received by which

is taken as a unit or yardstick of measurement from which to measure the benefits received by all other tracts or property of any kind or character in said drainage area, and that the unit so determined in this case was the sum of $25.00, and that such method, rule or basis is one that is fixed by the law, as interpreted by the Supreme Court of the State of South Dakota in the case of Milne vs. McKinnon, 32 S. D. 627, and one which will produce approximately correct results, and that said basis, rule or yardstick of measurement is applicable in like manner to tracts of land, highways, railroads or other property within said drainage area, and permits for the levying of an assessment with due regard and proportion upon each, any and all of said kinds of property. That a notice of hearing and hearing is given to each owner of agricultural land and each property owner within the district, which is constitutionally sufficient in that the notice required and so given is one that is reasonably probable to bring notice to the person affected, and the hearing required and given is one at which the person affected may test whether he has received any benefit at all, and if none, his land or property is exempted; whether the benefit to his land is equal to or more or less than the benefit to the unit, thereby determined whether or not his [fol. 128] land is taken without just compensation and without due process of law; if his land is benefited, the extent of such benefit; and whether the unit is benefited, and if so, how much; and the relative benefit of the protestant's property to the unit; whether the proceedings are legal or illegal; State v. Risty, 213 N. W. 952; Milne v. McKinnon, 32 S. D. 627; Curtis v. Pound, 32 S. D. 492; and that said drainage statutes place the determination of these proportions of benefits and the amount thereof in the hands of a tribunal, or the Board of County Commissioners of each county, and that said law is permissible and constitutional as said law has been interpreted by the Supreme Court of the State of South Dakota in Lumber Co. v. McMackin, 31 S. D. 507; Davison County v. Watertown Tile & Construction Co., 47 S. D. 101.

These defendants allege that no equalization of the proportion of benefits has yet been entered and filed by the defendant Board and that until such equalization has been made, entered and filed, the acts of the Board in making

said apportionment cannot be arbitrary, unjust and discriminatory, fanciful and speculative, or upon an arbitrary, fanciful or speculative basis, because said hearing allows all persons affected to determine the just amount of benefit received by such persons affected, even to the extent of no benefit whatsoever. State v. Risty, 213 N. W. 952. That in the event an error was made in said apportionment or an erroneous method or base used by which a wrong result may have been reached is a matter which should be taken advantage of at said meeting of equalization provided by the law, as said law has been interpreted by the Supreme Court [fol. 129] of the State of South Dakota in the case of Milne v. McKinnon, 32 S. D. 627, and that this action by the plaintiff is premature and that this court is without right or authority in law to direct the action of the defendant Board as a statutory tribunal to determine said matters upon said equalization hearing or to exercise the powers of said Board at said equalization hearing. That this Board and the predecessors, accompanied by said Chenoweth & Rettinghouse, personally examined all of the tracts of land and property within the drainage area and described in Exhibit C, before making said apportionment, and that they selected a tract of land, being one acre, and upon their best judgment decided that said tract was worth $100 before said drainage improvements were made and $125 after said drainage improvements were made. That the difference between these two sums was $25.00, and that said sum of $25.00 thereupon and thereby became the unit of benefit, from which to measure the benefits received by all other tracts of land and property within such drainage area. That said unit of benefit of $25.00 received by said tract of land was and can be used as a unit from which to estimate the proportionate benefit received by any other tract of land, highways or property within such drainage area, as said law has been interpreted by the Supreme Court of the State of South Dakota, in the case of Milne v. McKinnon, 32, S. D. 627. That thereafter said Board, in viewing other tracts and other property, determined the value to the said tracts and property prior to and subsequent to the installation of this project and upon determination of the difference between said two sums, the same was divided by [fol. 130] said unit of benefit of $25 to determine the num-

ber of units of actual benefit received by each tract or property. That said total number of units of actual benefit were then added together in arriving at the sum of -32,549.62, the total number of units of actual benefit in said drainage area, and that the assessed value of the unit was then determined by dividing the total amount of costs of said project by the total number of units of actual benefit apportioned in said drainage area, thereby arriving at the assessed value of each unit so apportioned. That this defendant Board in viewing said tracts and properties, exercised their best judgment as to the values of said tracts and properties both before and after said project was completed. That the yardstick of measurement or basis used was identical as to all of said properties and was the sum of $25.00, and that the apportionment to the plaintiff herein is in proportion and is substantially the amount of benefit which the plaintiff is now and will continue to receive from said drainage project, and is in proportion to the apportionment made against the agricultural lands; and that these defendants deny each and every allegation, except as hereinbefore expressly admitted, in said Paragraph 26 of plaintiff's bill of complaint.

Wherefore these defendants pray that plaintiff's motion for an interlocutory injunction be denied, and that these defendants have judgment for their costs, and for such other and further relief as to the Court may seem just and equitable.

[fol. 131] Dated July 6, 1927.

A. G. Risty, Chris Olsen, Fletcher Alguire, L. E. Larson, W. H. Stringham, Board of County Commissioners of Minnehaha County, South Dakota.

Subscribed and sworn to before me this 6th day of July, 1927. J. H. Fitzpatrick, Notary Public, South Dakota. (Notarial Seal.)

[File endorsement omitted.]

[fol. 132] IN UNITED STATES DISTRICT COURT

EXHIBITS IN EVIDENCE—Filed July 7, 1927

Drainage Ditch No. 2

March 6, 1912.

Resolution

Whereas the following is a statement containing the itemized cost of Drainage Ditch No. 2, Minnehaha County, South Dakota.

Contractor	$48,434.40
Right of way	10,089.00
Bridges	7,311.54
Interest on warrants	8,507.18
Engineering	2,556.89
Attorney's fees	1,500.00
Printing	690.45
Maintenance	600.00
Co. Commsrs per diem & mileage	467.93
Auditor & Treasurer	403.51
Abstractor	215.00
Livery hire	167.20
Attorney's expenses	125.44
Sheriff fees	37.65
	$81,106.19

Therefore be it resolved that the above statement be published once in the official newspapers of the County as required by Chapter 131 of the Laws of 1911 of the State of South Dakota.

Filed in the office of the Auditor of Minnehaha County, S. D. this 6th day of March 1912.

Henry Howe, County Auditor.

[fols. 133 & 134] R. S. S. 8490—Pub. of Statement of Costs

STATE OF SOUTH DAKOTA,
County of Minnehaha, ss:

I, E. A. Tyler, Deputy County Auditor in and for the County of Minnehaha and State of South Dakota, do hereby

certify the annexed and foregoing to be a true and correct copy of one of the records and files in my office relative to the Commissioners' Proceedings upon Drainage Ditch No. 2, and particularly that proceeding dated March 6, 1912 and appearing at page 166 of Ditch Record B, and I further certify that I have compared the same with the original on file in my office, and that the same is a full, true and complete copy thereof and of the whole thereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the said County at my office in the City of Sioux Falls, Minnehaha County, South Dakota, this 6th day of July A. D., 1927.

E. A. Tyler, Deputy County Auditor. (Seal County Auditor.)

[File endorsement omitted.]

[fol. 135] In the District Court of the United States for the District of South Dakota, Southern Division

File No. 621

The Board of County Commissioners of Minnehaha County, South Dakota, Plaintiff,

vs.

Chicago, Milwaukee & St. Paul Railway Company, Defendants

In re Appeal of Chicago, Milwaukee & St. Paul Railway Company, from assessment of proportion of benefits in the Matter of Drainage Ditch No. 2 in Minnehaha County, South Dakota.

Stipulation—Filed January 15, 1912

Whereas on the 4th day of November, 1910 the Board of County Commissioners of Minnehaha County, South Dakota did enter an order in the matter of Drainage Ditch No. 2, equalizing the assessment of the proportion of benefits

against the right of way of the Chicago, Milwaukee & St. Paul Railway Company as laid out and located across Sections 4 and 9, Township 101, Range 49, and Sections 4, 9, 16, 21, 28 and 33, Township 102, Range 49, and Sections 5, 8, 17, 20, 28, 29 and 33, Township 103, Range 49, and Section 32, Township 104, Range 49 west, 5th p. m., within the drainage area (the above being the Sioux Falls and Egan line); also across Sections 5, 8 and 9, Township 102, Range 49 west, 5th p. m., within the drainage area (being the Renner and Madison line). Total 41.5 miles, 167.06 acres, in the sum of two hundred and fifty-seven (257) unites; and

Whereas the said railway company did appeal to the Circuit Court of Minnehaha County, South Dakota from the said order, and did thereupon remove said cause to the [fol. 136] United States Circuit Court for the District of South Dakota, Southern Division, which court is now merged into the District Court of the United States for the District of South Dakota, Southern Division; and

Whereas it is impossible, at this time, to accurately specify the money value of each unit of assessment in the said Drainage Ditch proceedings:

Now, therefore, in the interest of saving expensive litigation, it is hereby stipulated and agreed by and between the said Railway Company and said Board of County Commissioners, subject to the order of Court that judgment may be entered, fixing the equalized proportion of benefits chargeable to said right of way of said railway company in said matter in the number of units that will, when the final assessment is made, in the said Drainage Ditch proceedings, produce the sum of Eighty five hundred Dollars, and that the said money assessment hereafter to be made shall be entered against said railway property in the sum of Eighty-five hundred Dollars, and in no greater or less sum, and that no costs shall be taxed to either party on account of said appeal or the removal thereof to this court, and that the said railway company shall not be called upon to pay for the transcript of the record of the said drainage ditch proceedings transmitted pursuant to said appeal, and that

each party hereto will pay one-half of the clerk's fees for final record in the office of the Clerk of this Court.

Dated January 3d, 1912.

The Board of County Commissioners of Minnehaha County, South Dakota, by Thomas McKinnon, Chairman, and John H. Gates, Attorney. Chicago,
[fols. 137 & 138] Milwaukee & St. Paul Railway Company, by Williams G. Porter, Attorney.

[File endorsements omitted.]

Certificate to foregoing paper omitted in printing.

[fol. 139] IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA IN AND FOR THE SOUTHERN DIVISION OF THE DISTRICT OF SOUTH DAKOTA

Law. No. 621, S. Div.

BOARD OF COUNTY COMMISSIONERS OF MINNEHAHA COUNTY, SOUTH DAKOTA, Plaintiff,

vs.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Defendant

JUDGMENT—January 15th, A. D. 1912

The above entitled action came on for hearing before the Court on the 15th day of January, A. D. 1912, upon the written stipulation of the parties hereto for judgment; Present and presiding, the Honorable James D. Elliott, Judge, and the other officers of the Court: John H. Gates, Esq., appearing for the plaintiff and William G. Porter, Esq., appearing for the defendant; whereupon an order was made and entered of record providing for judgment;

Now, pursuant to the provisions of said stipulation, and on the order of the Court, on this 15th day of January, A. D. 1912, it is Considered and Adjudged that the equalized proportion of benefits made by the Board of County Com-

missioners of said County on November 4th, 1910, be and the same is hereby modified by reducing the number of units assessed against the right of way of the Chicago, Milwaukee & St. Paul Railway Company as laid out and located across Sections Four and Nine, Township One Hundred One, Range Forty-nine, and Sections Four, Nine, Sixteen, Twenty-one, Twenty-eight and Thirty-three, Township One Hundred Two, Range Forty-nine and Sections Five, Eight, Seventeen, Twenty, Twenty-eight, Twenty-nine and Thirty-three, Township One Hundred Three, Range Forty-nine [fol. 140] and Section Thirty-two, Township One Hundred Four, Range Forty-nine west, Fifth P. M., within the drainage area, also across Sections Five, Eight and Nine Township One Hundred Two, Range Forty-nine West Fifth P. M., within the drainage area, from two hundred Fifty-seven units to the number of units that will when the final assessment is made in the said drainage ditch proceedings produce the sum of Eight Thousand Five Hundred Dollars;

It is further Considered and Adjudged that the money assessment hereafter to be levied against said property of said railway company, pursuant to the said equalized proportion of benefits as herein modified be entered against said property in the sum of Eight Thousand Five Hundred Dollars and in no greater or less sum.

In testimony whereof, I Oliver S. Pendar, Clerk of the District Court of the United States, for the District of South Dakota, do hereunto set my hand and affix the seal of said Court, this 15th day of January, A. D. 1912.

Oliver S. Pendar, Clerk.

Certificate to foregoing paper omitted in printing.

[fol. 141] [File endorsement omitted.]

[fol. 142] $8,500.00 Treasurer's Office, Minnehaha County, South Dakota, No. 13

Sioux Falls, April 8th, 1912.

Received of C. M. and St. P. Ry. Co. Eighty five hundred and no/100 Dollars for the whole of Drainage Assessment for Drainage Ditch No. 2 on the real estate below described:

Description	Section or lot	Township or block	Range	Total assessment	Units of equalized proportion of benefits	Installment	Cost of sale	Penalty and interest	Amount paid
Rty as laid out and located across sec's 4 & 9 twp. 101 Range 49 & sec's 4, 9, 16, 21, 28 & 33 twp. 102, Range 49 & sections 5, 8, 17, 20, 28, 29 & 33 Township 103 Range 49 & section 32 township 104 Range 49 West 5th P. M. within the drainage area. (The above being the Sioux Falls and Egan line.) Also across sections 5, 8 & 9 twp. 102 Range 49 West 5th P. M. within the drainage area (being the Madison and Renner Line).									
Total 14.5 miles				8,500 00	134 121				8,500 00

Copy of duplicate.

H. B. Benson, County Treasurer. B.

[fols. 143 & 144] Certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

[fol. 145] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING INJUNCTION—Filed July 14, 1927

The plaintiffs having filed their motion herein for an interlocutory injunction herein as prayed in the bill of complaint herein, and praying by said motion for the issuance of an interlocutory injunction suspending and restraining the enforcement, operation, and execution of Chapter 98 of the Session Laws of 1905, as amended and re-enacted as Chapter 134 of the Session Laws of 1907, and as amended and re-enacted as Sections 8458 to 8491 of the South Dakota Revised Code of 1919, and as amended at the Second Special Session of the Sixteenth Legislature of the State of South Dakota, by restraining the action of the County Commissioners, the County Auditor, and the County Treasurer of the county of Minnehaha in the state of South Dakota in the enforcement and execution of said statute upon the ground of the unconstitutionality of such statute, and said application for an interlocutory injunction having been presented to the Hon. James D. Elliott, District Judge of the District Court of the United States for the District of [fol. 146] South Dakota, and the said Hon. James D. Elliott having called to his assistance to hear and determine said application the Hon. Wilbur F. Booth, Circuit Judge of the Eighth Judicial Circuit, and the Hon. George C. Scott, District Judge of the Northern District of Iowa in said Eighth Judicial Circuit, and five days' notice of the hearing of the application for said interlocutory injunction having been given to the Governor and to the Attorney General of the state of South Dakota and to the defendants above named in said suit, and said application having been brought on for hearing before the Court composed of the Hon. Wilbur F.

Booth, Circuit Judge, the Hon. James D. Elliott, District Judge, and the Hon. George C. Scott, District Judge, as aforesaid, at Sioux Falls, in said District of South Dakota, upon the 7th day of July, 1927, and the plaintiffs appearing by Messrs. Bailey & Voorhees, their solicitors, and the defendants appearing by Mr. E. O. Jones and Mr. Norman B. Bartlett, their solicitors, and the Court having heard and considered said application, it is hereby ordered that the motion of the plaintiffs for an interlocutory injunction upon the ground of the unconstitutionality of said statute as aforesaid be and the same is hereby denied.

It is further ordered that plaintiffs be allowed their due exception to this order.

Done in open Court at Sioux Falls in said District of South Dakota this 12 day of July, 1927.

[fols. 147 & 148] By the Court.

Wilbur F. Booth, Geo. C. Scott, Jas. D. Elliott, Judges. Attest: Roy B. Marker, Clerk. (Seal of Court.)

[File endorsement omitted.]

[fol. 149] In United States District Court

[Title omitted]

Assignments of Error—Filed July 27, 1927

Now come H. E. Byram, Mark W. Potter, and Edward J. Brundage, as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, the plaintiffs in the above entitled suit, and file the following assignment of errors upon which they will rely upon their prosecution of the appeal in the above entitled suit from the order made in said suit by the Court composed of the Honorable Wilbur F. Booth, Circuit Judge, and the Honorable James D. Elliott and the Honorable George C. Scott, District Judges, denying the motion of the plaintiffs for an interlocutory injunction, which order bears date July 12, 1927, and was entered in the office of the Clerk of said District Court upon the 14th day of July, 1927.

First

That the United States District Court for the District of South Dakota, composed as aforesaid of the Honorable Wilbur F. Booth, Circuit Judge, and the Honorable James [fol. 150] D. Elliott and the Honorable George C. Scott, District Judges, erred in overruling the motion of the plaintiffs and appellants for the issuance of an interlocutory injunction in the above entitled suit.

Second

That said Court erred in not granting an interlocutory injunction as prayed in the bill of complaint in said suit and as asked by the plaintiffs in their motion in said suit for such injunction.

Third

That the Court erred in holding that the drainage statute of the State of South Dakota, to-wit, Chapter 98 of the Session Laws of 1905 of the State of South Dakota, as amended and reenacted as Chapter 134 of the Session Laws of 1907 of the State of South Dakota, and as amended and reenacted as Sections 8458 to 8491 of the South Dakota Revised Code of 1919, and as amended at the Second Special Session of the Sixteenth Legislature of the State of South Dakota, is not in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, said plaintiffs and appellants pray that said order be reversed and that said District Court for the District of South Dakota be ordered to enter an order and decree reversing the decision of said Court denying the motion of the plaintiffs and appellants for an interlocutory injunction in said cause.

Bailey & Voorhees, Solicitors for Plaintiffs and Appellants.

[fol. 151] [File endorsement omitted.]

[fol. 152] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed July 27, 1927

To the Honorable Wilbur F. Booth, Circuit Judge, the Honorable James D. Elliott, District Judge, and the Honorable George C. Scott, District Judge:

The above named plaintiffs, H. E. Byram, Mark W. Potter, and Edward J. Brundage, as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, feeling aggrieved by the order entered in the above entitled suit on the 14th day of July, 1927, denying their motion for an interlocutory injunction, do hereby appeal from said order to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith and they pray that their appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said order was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of such Court in such cases made and provided.

[fol. 153] And, your petitioners further pray that the proper order relating to the proper security to be required of them be made.

Dated, July 23rd, 1927.

H. E. Byram, Mark W. Potter, Edward J. Brundage, as Receivers of the Chicago, Milwaukee & St. Paul Railway Company, by Bailey & Voorhees, Their Solicitors.

[File endorsement omitted.]

[fol. 154] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 30, 1927

On motion of Messrs. Bailey & Voorhees, solicitors and counsel for the plaintiffs, H. E. Byram, Mark W. Potter, and Edward J. Brundage, as Receivers of the Chicago, Milwau-

kee & St. Paul Railway Company, it is hereby ordered that an appeal to the Supreme Court of the United States from the order heretofore filed and entered herein upon the 14th day of July, 1927, denying the motion of the plaintiffs for an interlocutory injunction herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of Five Hundred Dollars ($500).

Dated, July 26, 1927.

Wilbur F. Booth, Geo. C. Scott, Jas. D. Elliott, Judges.

Attest: Roy B. Marker, Clerk. (Seal of Court.)

[fol. 155] [File endorsement omitted.]

[fols. 156-165] Bond on appeal for $500.00 approved and filed July 30, 1927, omitted in printing.

[fol. 166] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 167] In Supreme Court of the United States

Statement of Points to be Relied Upon and Designation of Parts of Record to be Printed—Filed September 1, 1927

The appellants in the above entitled cause do hereby state that upon this appeal the points upon which they intend to rely are that the drainage statute of the State of South Dakota, to-wit, Chapter 98 of the Session Laws of 1905 of the State of South Dakota, as amended and re-enacted as Chapter 134 of the Session Laws of 1907 of the State of South Dakota, and as amended and re-enacted as Sec-

tions 8458 to 8491 of the South Dakota Revised Code of 1919, and as amended at the Second Special Session of the Sixteenth Legislature of the State of South Dakota, is in violation of the Fourteenth Amendment to the Constitution of the United States.

The parts of the record which the appellants think necessary for the consideration of said points are as follows, to-wit:

1. The bill of complaint.

2. The motion of the plaintiffs for an interlocutory injunction.

3. The notice to the Governor and to the Attorney General of the State of South Dakota and to the defendants [fol. 168] of the hearing upon the motion for an interlocutory injunction.

4. The showing of the defendants in opposition to the motion for an interlocutory injunction (said showing being entitled, showing in response to order to show cause).

5. The order denying the motion of the plaintiff for an interlocutory injunction.

6. The petition for appeal, together with the assignment of errors.

7. The order allowing appeal.

8. The bond on appeal with the order approving the same.

9. The citation on appeal.

Dated, Sioux Falls, South Dakota, August 29, 1927.

C. O. Bailey & H. E. Judge, Solicitors for Appellants. H. H. Triestal & O. V. Dyrne, of Counsel.

[fol. 168a] Due, timely and personal service on the within Præcipe for Printed Record acknowledged this 29th day of August A. D. 1927, at Sioux Falls, S. D.

E. O. Jones and N. B. Bartlett, Attorneys for Appellees.

[fol. 168b] [File endorsement omitted.]

[fol. 169] IN SUPREME COURT OF THE UNITED STATES

DESIGNATION OF ADDITIONAL PARTS OF RECORD TO BE PRINTED —Filed Sept. 2, 1927

The appellees in the above entitled cause do hereby designate additional parts of the record to be printed which they think material to the issues to be presented and upon which they will rely, from which it will appear that the constitutionality of the drainage statute of the State of South Dakota is not and cannot be involved in this cause.

The additional parts of the record, which appellees think necessary for the consideration of said points, are as follows, to-wit:

1. Certified copy of the Resolution of the Board of County Commissioners fixing the total cost of Drainage Ditch No. 2, filed July 7, 1927.

2. Certified copy of the Stipulation signed by the plaintiff and defendants herein, in the matter of the appeal of the plaintiff from assessment of proportion of benefits in re: Drainage Ditch No. 2, dated January 3, 1912, filed July 7, 1927.

3. Certified copy of judgment entered in this court upon above stipulation on January 15, 1912, filed herein July 7, 1927.

4. Certified copy of tax receipt, dated April 8, 1912, showing payment of tax on Drainage Ditch No. 2, filed herein July 7, 1927.

[fol. 170] Said above designated matters to be inserted as part of the defendants' showing designated at No. 4 of the appellants' præcipe.

Dated at Sioux Falls, South Dakota, August 30, 1927.

E. O. Jones & N. B. Bartlett, Solicitors for Appellees. B. C. Matthews, J. H. Fitzpatrick & Enos G. Jones, of Counsel.

[fol. 171] Due, timely and personal service of the within præcipe is hereby acknowledged by delivery to us of true and correct copy thereof at Sioux Falls, So. Dak. this 30th

day of August, 1927. C. O. Bailey and H. E. Judge, Attorney- for Appellant-.

[fol. 172] [File endorsement omitted.]

File No. 32,953. South Dakota D. C. U. S. Term No. 501. H. E. Bryan, Mark W. Potter, and Edward J. Brundage, as Receivers, etc., Appellants, vs. A. G. Risty, Chris Olson, L. E. Larson, et al., etc., et al. Filed September 1, 1927. File No. 32,953.